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FROM

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 895

IV. CITATIONS 915

PHILIPPINE REPORTS

Page

Abad, in his capacity as the Secretary of Department of Budget and Management, et al., Florencio B. – Augusto L. Syjuco, Jr., Ph.D. *vs*. 716
Abad, in his official capacity as Head of the Department of Budget and Management, et al., Secretary Florencio – Manuelito R. Luna *vs*. 717
Abad of the Department of Budget and Management (DBM), Secretary Florencio B. – Integrated Bar of the Philippines (IBP) *vs*. 717
Aguilar, Rodolfo S. *vs*. Edna G. Siasat 344
Alvarez, et al., Edgar Allen – People of the Philippines *vs*. 451
Ambos, et al., Ricardo – G.J.T. Rebuilders Machine Shop, et al. *vs*. 166
Andal, Spouses Ruben and Miraflor – Irene D. Ofilada *vs*. 27
Aquino, Augusto M. *vs*. Hon. Ismael P. Casabar, etc., et al. 1
Aquino, Augusto M. *vs*. Ma. Ala F. Domingo, et al. 1
Aquino III, et al., President Benigno Simeon C. – Greco Antonious Beda B. Belgica, et al. *vs*. 718
Aquino III, President of the Republic of the Philippines, et al., Benigno Simeon C. – Maria Carolina P. Araullo, Chairperson, Bagong Alyansang Makabayan, et al. *vs*. 716
Aquino III, President of the Republic of the Philippines, et al., Benigno Simeon C. – Confederation for Unity, Recognition and Advancement of Government Employees (Courage), represented by its 1st Vice President, Santiago Dasmarinas, Jr., et al. *vs*. 719
Araullo, Chairperson, Bagong Alyansang Makabayan, et al., Maria Carolina P. *vs*. Benigno Simeon C. Aquino III, President of the Republic of the Philippines, et al. 716
Baterina, Atty. Benjamin F. – Joselito F. Tejano *vs*. 71
Belgica, et al., Greco Antonious Beda B. *vs*. President Benigno Simeon C. Aquino III, et al. 717

Page

Buhayang-Margallo, Atty. Mercedes –
Reynaldo G. Ramirez *vs*. 473
C.F. Sharp Crew Management, Inc., et al. *vs*.
Clemente M. Perez 46
Casabar, etc., et al., Hon. Ismael P. –
Augusto M. Aquino *vs*. 1
Casiño, et al., Hon. Teodoro A. –
Hon. Ramos Jesus P. Paje, in his capacity
as Secretary of the Department of Environment
and Natural Resources (DENR) *vs*. 498
– Redondo Peninsula Energy, Inc. *vs*. 498
– Subic Bay Metropolitan Authority *vs*. 499
Casiño, et al., Hon. Teodoro A. *vs*.
Ramon Jesus P. Paje, in his capacity as Secretary
of the Department of Environment and Natural
Resources, et al. 499
Casiño, et al., Hon. Teodoro A. *vs*.
Redondo Peninsula Energy, Inc. 499
Commission on Audit (COA) Proper, et al. –
Fortune Life Insurance Company, Inc. *vs*. 97
Commissioner of Internal Revenue –
Winebrenner & Iñigo Insurance Brokers, Inc. *vs*. 375
Concepcion, Spouses Henry A. and Blesilda S. *vs*.
Atty. Elmer A. Dela Rosa 485
Confederation for Unity, Recognition and
Advancement of Government Employees
(Courage), represented by its 1st Vice
President, Santiago Dasmarinas, Jr., et al. *vs*.
Benigno Simeon C. Aquino III, President of the
Republic of the Philippines, et al. 719
Court of Appeals (2nd Division), et al. –
Henry Ong Lay Hin *vs*. 15
De Castro, Marieta *vs*. People of the Philippines 424
De Juan, etc., et al., Benedict M. –
Felisicimo R. Sabijon, et al. *vs*. 110
Dela Rosa, Atty. Elmer A. – Spouses Henry A.
Concepcion and Blesilda S. Concepcion *vs*. 485

Page

Department of Budget and Management and/or Hon. Florencio B. Abad – Philippine Constitution Association (PHILCONSA), represented by Dean Froilan M. Bacungan, et al. *vs*. 717
Dimacuha, Jr., et al., Tomas – People of the Philippines *vs*. 451
Domingo, et al., Ma. Ala F. – Augusto M. Aquino *vs*. 1
Eyana, Al O. *vs*. Philippine Transmarine Carriers, Inc., et al. 232
First Optima Realty Corporation *vs*. Securitron Security Services, Inc. 326
Fortune Life Insurance Company, Inc. *vs*. Commission on Audit (COA) Proper, et al. 97
G.J.T. Rebuilders Machine Shop, et al. *vs*. Ricardo Ambos, et al. 166
Gadia, et al., Ma. Charito C. *vs*. Sykes Asia, Inc./Chuck Sykes/Mike Hinds/Michael Henderson 413
Garcia, Melvyn G. *vs*. Atty. Raul H. Sesbreño 463
Home Guaranty Corporation *vs*. La Savoie Development Corporation 123
Integrated Bar of the Philippines (IBP) *vs*. Secretary Florencio B. Abad of the Department of Budget and Management (DBM) 717
La Savoie Development Corporation – Home Guaranty Corporation *vs*. 123
Leus, Cheryll Santos *vs*. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB 186
Luna, Manuelito R. *vs*. Secretary Florencio Abad, in his official capacity as Head of the Department of Budget and Management, et al. 717
Manarpiis, Essencia Q. *vs*. Texan Philippines, Inc., et al. 305
Narra Nickel Mining and Development Corp., et al. *vs*. Redmont Consolidated Mines Corp. 255
Ochoa, Executive Secretary, et al., Paquito N. – Volunteers Against Crime and Corruption (VACC), represented by Dante L. Jimenez *vs*. 719
Ochoa, Jr., et al., The Honorable Executive Secretary Paquito N. – Atty. Jose Malvar Villegas, Jr. *vs*. 717

Page

Office of the Court Administrator *vs.* Constantino P. Redoña, former Clerk of Court II, Municipal Trial Court, Tanauan, Leyte 83
Ofilada, Irene D. *vs.* Spouses Ruben Andal and Miraflor Andal 27
Ong Lay Hin, Henry *vs.* Court of Appeals (2nd Division), et al. 15
Paje, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), Hon. Ramos Jesus P. *vs.* Hon. Teodoro A. Casiño, et al. 498
Paje, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), Hon. Ramos Jesus P. *vs.* Noraida Velarmino, et al. 498
Pasion *y* Dela Cruz *a.k.a.* "Athan", et al., Nathaniel – People of the Philippines *vs.* 359
People of the Philippines – Marieta De Castro *vs.* 424
People of the Philippines – Kyle Anthony Zabala *vs.* 59
People of the Philippines *vs.*
Edgar Allen Alvarez, et al. 451
Tomas Dimacuha, Jr., et al. 451
Nathaniel Pasion *y* Dela Cruz *a.k.a.* "Athan", et al. 359
Perez, Clemente M. – C.F. Sharp Crew Management, Inc., et al. *vs.* 46
Philippine Constitution Association (PHILCONSA), represented by Dean Froilan M. Bacungan, et al. *vs.* Department of Budget and Management and/or Hon. Florencio B. Abad 717
Philippine Transmarine Carriers, Inc., et al. – Al O. Eyana *vs.* 232
Ramirez, Reynaldo G. *vs.* Atty. Mercedes Buhayang-Margallo 473
Paje, in his capacity as Secretary of the Department of Environment and Natural Resources, et al., Ramon Jesus P. – Hon. Teodoro A. Casiño, et al. 499
Redmont Consolidated Mines Corp. – Narra Nickel Mining and Development Corp., et al. *vs.* 255

Page

Redondo Peninsula Energy, Inc. –
Hon. Teodoro A. Casiño, et al. *vs*. 499
Redondo Peninsula Energy, Inc. *vs*.
Hon. Teodoro A. Casiño, et al. 498
Redondo Peninsula Energy, Inc. *vs*.
Noraida Velarmino, et al. 498
Redoña, former Clerk of Court II, Municipal
Trial Court, Tanauan, Leyte, Constantino P.
– Office of the Court Administrator *vs*. 83
Republic of the Philippines *vs*. Cecilia Grace L.
Roasa, married to Greg Ambrose Roasa,
as herein represented by her Attorneys-in-fact,
Bernardo M. Nicolas, Jr., et al. 439
Roasa, married to Greg Ambrose Roasa,
as herein represented by her Attorneys-in-fact,
Bernardo M. Nicolas, Jr., et al., Cecilia Grace L. –
Republic of the Philippines *vs*. 439
Sabijon, et al., Felisicimo R. *vs*.
Benedict M. De Juan, etc., et al. 110
Securitron Security Services, Inc. –
First Optima Realty Corporation *vs*. 326
Sesbreño, Atty. Raul H. – Melvyn G. Garcia *vs*. 463
Siasat, Edna G. – Rodolfo S. Aguilar *vs*. 344
St. Scholastica's College Westgrove and/or
Sr. Edna Quiambao, OSB – Cheryll Santos Leus *vs*. 186
Subic Bay Metropolitan Authority *vs*.
Hon. Teodoro A. Casiño, et al. 499
Subic Bay Metropolitan Authority *vs*.
Noraida Velarmino, et al. 499
Syjuco, Jr., Ph.D., Augusto L. *vs*. Florencio B. Abad,
in his capacity as the Secretary of Department
of Budget and Management, et al. 716
Sykes Asia, Inc./Chuck Sykes/Mike Hinds/Michael
Henderson – Ma. Charito C. Gadia, et al. *vs*. 413
Tejano, Joselito F. *vs*. Atty. Benjamin F. Baterina 71
Texan Philippines, Inc., et al. –
Essencia Q. Manarpiis *vs*. 305

Page

Velarmino, et al., Noraida – Hon. Ramos
Jesus P. Paje, in his capacity as Secretary
of the Department of Environment and Natural
Resources (DENR) *vs*. 498
– Redondo Peninsula Energy, Inc. *vs*. 498
– Subic Bay Metropolitan Authority *vs*. 499
Villegas, Jr., Atty. Jose Malvar *vs*. The Honorable
Executive Secretary Paquito N. Ochoa, Jr., et al. 717
Volunteers Against Crime and Corruption (VACC),
represented by Dante L. Jimenez *vs*. Paquito N.
Ochoa, Executive Secretary, et al. 719
Winebrenner & Iñigo Insurance Brokers, Inc. *vs*.
Commissioner of Internal Revenue 375
Zabala, Kyle Anthony *vs*. People of the Philippines 59

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 191470. January 26, 2015]

AUGUSTO M. AQUINO, *petitioner, vs.* **HON. ISMAEL P. CASABAR, as Presiding Judge Regional Trial Court-Guimba, Nueva Ecija, Branch 33 and MA. ALA F. DOMINGO and MARGARITA IRENE F. DOMINGO, substituting Heirs of the deceased ANGEL T. DOMINGO,** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; TWO CONCEPTS OF ATTORNEY'S FEES; DISCUSSED.—** In the case of *Rosario, Jr. v. De Guzman,* the Court clarified and discussed the two concepts of attorney's fees – that is, ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages. Although both concepts are similar in some respects, they differ from each other.

2. **ID.; ATTORNEY'S FEES AS COMPENSATION FOR PROFESSIONAL SERVICES RENDERED IN AGRARIAN CASE; MAY BE DETERMINED BY THE HANDLING JUDGE UPON PROPER PETITION AS INCIDENTAL ISSUE TO THE MAIN CASE.—** [T]he attorney's fees being claimed by the petitioner is the compensation for professional

services rendered, and not an indemnity for damages. Petitioner is claiming payment from private respondents for the successful outcome of the agrarian case which he represented. We see no valid reason why public respondent cannot pass upon a proper petition to determine attorney's fees considering that it is already familiar with the nature and the extent of petitioner's legal services. If we are to follow the rule against multiplicity of suits, then with more reason that petitioner's motion should not be dismissed as the same is in effect incidental to the main case.

3. **ID.; ID.; ID.; NON-PAYMENT OF DOCKET FEES FOR THE MOTION DID NOT DIVEST THE AGRARIAN COURT OF ITS JURISDICTION.—** Petitioner's failure to pay the docket fees pertinent to his motion should not be considered as having divested the court *a quo's* jurisdiction. x x x [P]ursuant to the ruling in *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, should there be unpaid docket fees, the same should be considered as a lien on the judgment.

4. **ID.; ID.; ACTION TO RECOVER ATTORNEY'S FEES; CASE AT BAR.—** [T]he case of *Traders Royal Bank Employees Union-Independent v. NLRC* is instructive: x x x ***It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action. x x x*** Here, apparently petitioner filed his claim as an incident of the main action, as in fact, his motion was for the court's approval of charging attorney's lien and the prayer thereto was to direct the entry into the case records the attorney's fees he is claiming. x x x Nevertheless, it is within petitioner's right to wait for the finality of the judgment, instead of filing it ahead of the court's resolution, since precisely the basis of the determination of the attorney's fees is the final disposition of the case, that is, the just compensation to be awarded to the private respondents. x x x Considering that petitioner and Atty. Domingo's agreement was contracted verbally, Article 1145 of the Civil Code allows petitioner a period of six (6) years within which to file an action to recover professional fees for services rendered.

5. **ID.; ID.; AS ALLEGED CONTINGENT FEES WAS NOT IN WRITING, THE ATTORNEY CAN ONLY RECOVER ON THE BASIS OF *QUANTUM MERUIT*.—** Considering that

the contract [for contingent fees] was made verbally and that there was no evidence presented to justify the 30% contingent fees being claimed by petitioner, the only way to determine his right to appropriate attorney's fees is to apply the principle of *quantum meruit*, to wit: *Quantum meruit* – literally meaning as much as he deserves – is used as basis for determining an attorney's professional fees in the absence of an express agreement. x x x An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees. WHEREFORE, x x x based on *quantum meruit*, the amount of attorney's fees is at the rate of fifteen percent (15%) of the amount of the increase in valuation of just compensation awarded to the private respondents.

6. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; GUIDELINES FOR DETERMINING THE PROPER AMOUNT OF ATTORNEY'S FEES.—** Rule 20.01 of the Code of Professional Responsibility lists the guidelines for determining the proper amount of attorney fees, to wit: a) The time spent and the extent of the services rendered or required; b) The novelty and difficulty of the questions involved; c) The importance of the subject matter; d) The skill demanded; e) The probability of losing other employment as a result of acceptance of the proffered case; f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs; g) The amount involved in the controversy and the benefits resulting to the client from the service; h) The contingency or certainty of compensation; i) The character of the employment, whether occasional or established; and j) The professional standing of the lawyer.

APPEARANCES OF COUNSEL

Pejo Aquino & Associates for petitioner.
Conde and Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a special civil action for *certiorari*[1] under Rule 65 of the Rules of Court, dated March 17, 2010, filed by Atty. Augusto M. Aquino (*petitioner*) assailing the Order dated January 11, 2010 issued by respondent Presiding Judge Ismael P. Casabar (*public respondent*), in relation to Agrarian Case No. 1217-G,[2] for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

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

On June 27, 2002, Atty. Angel T. Domingo (now deceased) verbally contracted petitioner to represent him in Agrarian Case No. 1217-G on a contingency fee basis. The case was for the determination of the just compensation for the expropriation and taking of Atty. Domingo's ricelands consisting of 60.5348 hectares, situated in Guimba, Nueva Ecija, by the Department of Agrarian Reform (*DAR*), pursuant to Presidential Decree (*P.D.)* 27. The DAR and the Land Bank of the Philippines (*Land Bank*) initially valued Atty. Domingo's property at ₱484,236.27 or ₱7,999.30 per hectare, which the latter, through petitioner-counsel, opposed in courts.

Eventually, the RTC, acting as Special Agrarian Court (*RTC/ SAC*) issued a Decision dated April 12, 2004 fixing the just compensation for Atty. Domingo's property at ₱2,459,319.70 or ₱40,626.54 per hectare, or an increase of ₱1,975,083.43 over the initial DAR and the Land Bank valuation. Land Bank moved for reconsideration, but was denied, thus, it filed a petition for review docketed as CA-G.R. SP No. 85394. However, in a Decision dated June 12, 2007, the appellate court affirmed

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[1] *Rollo*, pp. 3-22.

[2] Entitled "*Angel T. Domingo vs. Department of Agrarian Reform and the Land Bank of the Philippines.*"

in toto the SAC Decision dated April 12, 2004. Land Bank moved for reconsideration anew, but was denied.

Meanwhile, on September 30, 2007, Atty. Domingo died. Petitioner filed a Manifestation dated December 11, 2007 of the fact of Atty. Domingo's death and the substitution of the latter by his legal heirs, Ma. Ala F. Domingo and Margarita Irene F. Domingo (*private respondents*).

Land Bank assailed the appellate court's decision and resolution before the Supreme Court via a petition for review on *certiorari* dated December 4, 2007 docketed as G.R. No. 180108 entitled "*Land Bank of the Philippines vs. Angel T. Domingo*." However, in a Resolution dated September 17, 2008, the Court denied the same for failure to sufficiently show any reversible error in the appellate court's decision. On December 15, 2008, the Court denied with finality Land Bank's motion for reconsideration.

On February 11, 2009,[3] petitioner wrote private respondent Ma. Ala Domingo and informed her of the finality of the RTC/SAC decision as affirmed by the Court of Appeals and the Supreme Court. He then requested her to inform the Land Bank of the segregation of petitioner's thirty percent (30%) contingent attorney's fees out of the increase of the just compensation for the subject property, or thirty percent (30%) of the total increase amounting to Php1,975,983.43. Petitioner claimed never to have received a reply from private respondent.

On March 30, 2009, petitioner received a copy of the entry of judgment from this Court certifying that its Resolution dated September 17, 2008 in G.R. No. 180108 has already become final and executory on March 3, 2009.

On July 28, 2009, petitioner received a Notice of Appearance dated July 16, 2009 filed by Atty. Antonio G. Conde, entering his appearance as counsel of herein private respondents and replacing him as counsel in Agrarian Case No. 1217-G.

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[3] *Rollo*, pp. 35-36.

On August 14, 2009, private respondents, through their new counsel, Atty. Conde, filed a Motion for Execution dated August 6, 2009 of the RTC/SAC Decision dated April 12, 2004.

On August 12, 2009, petitioner filed a Motion for Approval of Charging Attorney's Lien and for the Order of Payment.[4] Petitioner further executed an Affidavit[5] dated August 10, 2009, attesting to the circumstances surrounding the legal services he has rendered for the deceased Atty. Domingo and the successful prosecution of the Agrarian case from the RTC/SAC through the appellate court and the Supreme Court.

On August 18, 2009, private respondents filed a Motion to Dismiss/Expunge Petitioner's Motion.[6] Public respondent Presiding Judge Casabar denied the same.[7] Private respondents moved for reconsideration.

On January 11, 2010, public respondent Judge Casabar issued the disputed Order denying petitioner's motion for approval of attorney's lien, the dispositive portion of which reads:

x x x x x x x x x

Examining the basis of the instant motion for reconsideration, this court agrees with respondents – movants that this court has no jurisdiction over Atty. Aquino's motion for approval of charging (Attorney's) lien having been filed after the judgment has become final and executory. Accordingly, the motion for reconsideration is granted and the motion for approval of (Attorney's) lien is denied and or expunged from the records of the case.

SO ORDERED.

On the same day, January 11, 2010, public respondent issued an Order directing the issuance of a Writ of Execution of the RTC/SAC Decision dated April 12, 2004.

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[4] *Id*. at 25-28.

[5] *Id*. at 29-34.

[6] *Id*. at 40-44.

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

On January 12, 2010, the Clerk of Court of Branch 33, RTC of Guimba, Nueva Ecija, issued a Writ of Execution of the April 12, 2004. On January 15, 2010, the Sheriff of the RTC of Guimba, Nueva Ecija issued a Notice of Garnishment.

Thus, the instant petition for *certiorari* via Rule 65, raising the following issues:

I

WHETHER OR NOT A CHARGING (ATTORNEY'S) LIEN CAN EFFECTIVELY BE FILED ONLY BEFORE JUDGMENT IS RENDERED.

II

WHETHER OR NOT RESPONDENT PRESIDING JUDGE HAS THE JURISDICTION TO TAKE COGNIZANCE OVER PETITIONER'S MOTION FOR APPROVAL OF CHARGING (ATTORNEY'S) LIEN FILED AFTER THE JUDGMENT HAS BECOME FINAL AND EXECUTORY.

III

WHETHER OR NOT THE RESPONDENT PRESIDING JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING THE CHALLENGED ORDER.[8]

Petitioner maintains that he filed the motion for charging attorney's lien and order of payment in the very same case, Agrarian Case No. 1217-G, as an incident thereof, wherein he was the counsel during the proceedings of the latter, and that he is allowed to wait until the finality of the case to file the said motion.

Private respondents, on the other hand, counter that the motion was belatedly filed and that it was filed without the payment of docket fees, thus, the court *a quo* did not acquire jurisdiction over the case.

RULING

In a nutshell, the issue is whether the trial court committed a reversible error in denying the motion to approve attorney's

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[8] *Id.* at 12.

lien and order of payment on the ground that it lost jurisdiction over the case since judgment in the case has already become final and executory.

We rule in favor of the petitioner.

In the case of *Rosario, Jr. v. De Guzman,*[9] the Court clarified a similar issue and discussed the two concepts of attorney's fees – that is, ordinary and extraordinary. In its ordinary sense, it is the reasonable compensation paid to a lawyer by his client for legal services rendered. In its extraordinary concept, it is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.[10] Although both concepts are similar in some respects, they differ from each other, as further explained below:

> The attorney's fees which a court may, in proper cases, award to a winning litigant is, strictly speaking, an item of damages. It differs from that which a client pays his counsel for the latter's professional services. However, the two concepts have many things in common that a treatment of the subject is necessary. The award that the court may grant to a successful party by way of attorney's fee is an indemnity for damages sustained by him in prosecuting or defending, through counsel, his cause in court. It may be decreed in favor of the party, not his lawyer, in any of the instances authorized by law. On the other hand, the attorney's fee which a client pays his counsel refers to the compensation for the latter's services. The losing party against whom damages by way of attorney's fees may be assessed is not bound by, nor is his liability dependent upon, the fee arrangement of the prevailing party with his lawyer. The amount stipulated in such fee arrangement may, however, be taken into account by the court in fixing the amount of counsel fees as an element of damages.
>
> The fee as an item of damages belongs to the party litigant and not to his lawyer. It forms part of his judgment recoveries against the losing party. The client and his lawyer may, however, agree that whatever attorney's fee as an element of damages the court may award shall pertain to the lawyer as his compensation or as part thereof.

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[9] G.R. No. 191247, July 10, 2013, 701 SCRA 78.

[10] *Ortiz v. San Miguel*, 582 Phil. 627, 640 (2008).

In such a case, the court upon proper motion may require the losing party to pay such fee directly to the lawyer of the prevailing party.

The two concepts of attorney's fees are similar in other respects. They both require, as a prerequisite to their grant, the intervention of or the rendition of professional services by a lawyer. As a client may not be held liable for counsel fees in favor of his lawyer who never rendered services, so too may a party be not held liable for attorney's fees as damages in favor of the winning party who enforced his rights without the assistance of counsel. Moreover, both fees are subject to judicial control and modification. And the rules governing the determination of their reasonable amount are applicable in one as in the other.[11]

Similarly, in the instant case, the attorney's fees being claimed by the petitioner is the compensation for professional services rendered, and not an indemnity for damages. Petitioner is claiming payment from private respondents for the successful outcome of the agrarian case which he represented. We see no valid reason why public respondent cannot pass upon a proper petition to determine attorney's fees considering that it is already familiar with the nature and the extent of petitioner's legal services. If we are to follow the rule against multiplicity of suits, then with more reason that petitioner's motion should not be dismissed as the same is in effect incidental to the main case.

We are, likewise, unconvinced that the court *a quo* did not acquire jurisdiction over the motion solely due to non-payment of docket fees. Petitioner's failure to pay the docket fees pertinent to his motion should not be considered as having divested the court *a quo's* jurisdiction. We note that, in this case, there was no showing that petitioner intended to evade the payment of docket fees as in fact he manifested willingness to pay the same should it be necessary.[12]

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[11] *Id*. at 7, citing R.E. Agpalo, *Comments on The Code of Professional Responsibility and The Code of Judicial Conduct* (2004 edition Rex Book Store, Inc., Manila 2004), pp. 329-330.

[12] Comment/Opposition dated September 25, 2009; *rollo*, pp. 47-51.

Likewise, pursuant to the ruling in *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, should there be unpaid docket fees, the same should be considered as a lien on the judgment. Thus, even on the assumption that additional docket fees are required as a consequence of petitioner's motion, its non-payment will not result in the court's loss of jurisdiction over the case.[13]

With regards to how attorney's fees for professional services can be recovered, and when an action for attorney's fees for professional services can be filed, the case of *Traders Royal Bank Employees Union-Independent v. NLRC*[14] is instructive:

> x x x ***It is well settled that a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.***
>
> ***With respect to the first situation, the remedy for recovering attorney's fees as an incident of the main action may be availed of only when something is due to the client. Attorney's fees cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court.*** The issue over attorney's fees only arises when something has been recovered from which the fee is to be paid.
>
> ***While a claim for attorney's fees may be filed before the judgment is rendered, the determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's fees may arise has become final.*** Otherwise, the determination to be made by the courts will be premature. Of course, a petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.
>
> It is apparent from the foregoing discussion that a lawyer has two options as to when to file his claim for professional fees. ***Hence, private respondent was well within his rights when he made his claim and waited for the finality of the judgment for holiday pay differential, instead of filing it ahead of the award's complete***

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[13] See *Home Guaranty Corp. v. R-11 Builders Inc., and NHA*, G.R. No. 192649, March 9, 2011, 640 SCRA 219, 243.

[14] 336 Phil. 705, 713-714 (1997).

resolution. To declare that a lawyer may file a claim for fees in the same action only before the judgment is reviewed by a higher tribunal would deprive him of his aforestated options and render ineffective the foregoing pronouncements of this Court.[15]

Here, apparently petitioner filed his claim as an incident of the main action, as in fact, his motion was for the court's approval of charging attorney's lien and the prayer thereto was to direct the entry into the case records the attorney's fees he is claiming. Needless to say, petitioner's motion for approval of charging attorney's lien and order of payment was not intended to be filed as a separate action. Nevertheless, it is within petitioner's right to wait for the finality of the judgment, instead of filing it ahead of the court's resolution, since precisely the basis of the determination of the attorney's fees is the final disposition of the case, that is, the just compensation to be awarded to the private respondents.

Moreover, the RTC/SAC decision became final and executory on March 3, 2009, and petitioner filed his Motion to Determine Attorney's Fees on August 10, 2009, or only about four (4) months from the finality of the RTC/SAC decision. Considering that petitioner and Atty. Domingo's agreement was contracted verbally, Article 1145[16] of the Civil Code allows petitioner a period of six (6) years within which to file an action to recover professional fees for services rendered.[17] Thus, the disputed motion to approve the charging of attorney's lien and the order of payment was seasonably filed.

Petitioner claims that he and Atty. Domingo agreed to a contract for contingent fees equivalent to thirty percent (30%) of the increase of the just compensation awarded, *albeit* verbally.

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[15] *Traders Royal Bank Employees Union-Independent v. NLRC, supra,* at 713-714. (Emphasis ours)

[16] Article 1145. The following actions must be commenced within six years:

(1) Upon an oral-contract.

(2) Upon a quasi-contract.

[17] *Anido v. Negado*, 419 Phil. 800, 807 (2001).

However, a contract for contingent fees is an agreement *in writing* by which the fees, usually a fixed percentage of what may be recovered in the action, are made to depend upon the success in the effort to enforce or defend a supposed right. Contingent fees depend upon an express contract, without which the attorney can only recover on the basis of *quantum meruit*.[18] Here, considering that the contract was made verbally and that there was no evidence presented to justify the 30% contingent fees being claimed by petitioner, the only way to determine his right to appropriate attorney's fees is to apply the principle of *quantum meruit*, to wit:

> *Quantum meruit* – literally meaning as much as he deserves – is used as basis for determining an attorney's professional fees in the absence of an express agreement. The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees.

Further, Rule 20.01 of the Code of Professional Responsibility lists the guidelines for determining the proper amount of attorney fees, to wit:

> Rule 20.1 – A lawyer shall be guided by the following factors in determining his fees:
>
> a) The time spent and the extent of the services rendered or required;
>
> b) The novelty and difficult of the questions involved;
>
> c) The important of the subject matter;
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> d) The skill demanded;

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[18] *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 96, citing Agpalo, *Legal and Judicial Ethics* (2009), p. 408.

e) The probability of losing other employment as a result of acceptance of the proffered case;

f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;

g) The amount involved in the controversy and the benefits resulting to the client from the service;

h) The contingency or certainty of compensation;

i) The character of the employment, whether occasional or established; and

j) The professional standing of the lawyer.

Private respondents never rebutted the fact that petitioner rendered legal services in the subject case. It is likewise undisputed that it was petitioner who successfully represented Atty. Domingo in Agrarian Case No. 12-17-G before the Special Agrarian Court, in the Court of Appeals in CA-G.R. SP No. 85394, and before this Court in G.R. No. 180108 where the case eventually attained finality. It is, therefore, through petitioner's effort for a lengthy period of seven (7) years that the just compensation for the property owned by deceased Atty. Domingo increased. It cannot be denied then that private respondents benefited from the said increase in the just compensation. Thus, considering petitioner's effort and the amount of time spent in ensuring the successful disposition of the case, petitioner rightfully deserves to be awarded reasonable attorney's fees for services rendered.

Ordinarily, We would have left it to the trial court the determination of attorney's fees based on *quantum meruit*, however, following the several pronouncements of the Court that it will be just and equitable to now assess and fix the attorney's fees in order that the resolution thereof would not be needlessly prolonged,[19] this Court, which holds and exercises the power to fix attorney's fees on *quantum meruit* basis in the absence of an express written agreement between the attorney

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[19] *Traders Royal Bank Employees Union-Independent v. NLRC*, *supra* note 14, at 724; *Rosario Jr. v. De Guzman*, *supra* note 9, at 91.

and the client, deems it fair to fix petitioner's attorney's fees at fifteen percent (15%) of the increase in the just compensation awarded to private respondents.

The fact that the practice of law is not a business and the attorney plays a vital role in the administration of justice underscores the need to secure him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice, imposition or fraud on the part of his client as the client against abuse on the part of his counsel. The duty of the court is not alone to see that a lawyer acts in a proper and lawful manner; it is also its duty to see that a lawyer is paid his just fees. With his capital consisting of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if after putting forth the best in him to secure justice for his client he himself would not get his due.[20]

WHEREFORE, the petition is **GRANTED**. Accordingly, the Court grants the Motion for Approval of Charging Attorney's Lien filed by petitioner Atty. Augusto M. Aquino. Based on *quantum meruit,* the amount of attorney's fees is at the rate of fifteen percent (15%) of the amount of the increase in valuation of just compensation awarded to the private respondents.

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Reyes, and *Jardeleza, JJ.,* concur.

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[20] *Rosario, Jr. v. De Guzman, supra* note 9, at 91-92.

SECOND DIVISION

[G.R. No. 191972. January 26, 2015]

HENRY ONG LAY HIN, *petitioner, vs.* **COURT OF APPEALS (2nd Division), HON. GABRIEL T. INGLES, as Presiding Judge of RTC Branch 58, Cebu City, and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED.— Grave abuse of discretion is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."

2. ID.; CIVIL PROCEDURE; SERVICE OF PLEADINGS AND OTHER PAPERS; SERVICE BY REGISTERED MAIL; REGISTRY RETURN CARD AS EVIDENCE THEREOF.— The registry return card is the "official . . . record evidencing service by mail." It "carries the presumption that it was prepared in the course of official duties that have been regularly performed [and, therefore,] it is presumed to be accurate, unless proven otherwise[.]"

3. ID.; ID.; JUDGMENTS; ENTRY OF JUDGMENT AND FINAL RESOLUTIONS; MADE IF NO APPEAL OR MOTION FOR NEW TRIAL OR RECONSIDERATION IS FILED WITHIN THE TIME PROVIDED.— Under Rule 51, Section 10 of the Rules of Court on "Judgment," "if no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry."

4. LEGAL ETHICS; LAWYERS; AS A RULE, NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT; EXCEPTION IS WHEN NEGLIGENCE OF THE COUNSEL IS GROSS, DEPRIVING THE CLIENT OF DUE PROCESS OF LAW.—

The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. x x x But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action. Thus, in *Bejarasco, Jr. v. People*, this court reiterated: For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

APPEARANCES OF COUNSEL

Madarang & Gomos Law Firm for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Hiring legal counsel does not relieve litigants of their duty to "monitor the status of [their] case[s],"[1] especially if their cases are taking an "unreasonably long time"[2] to be resolved.

This is a Petition[3] for *certiorari*, prohibition, and mandamus with application for preliminary and/or mandatory injunction to

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[1] *Bejarasco, Jr. v. People,* G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331 [Per *J.* Bersamin, Third Division].

[2] *Id*.

[3] *Rollo*, pp. 3-26.

set aside the Court of Appeals' Entry of Judgment[4] in CA-G.R. CR No. 24368, and the Regional Trial Court, Branch 58, Cebu City's Order[5] dated March 25, 2004 and Order of Detention[6] dated February 15, 2010 in Criminal Case No. CBU-48773.[7]

In the Decision[8] dated February 8, 2000, the Regional Trial Court, Branch 58, Cebu City, convicted petitioner Henry Ong Lay Hin (Ong) and Leo Obsioma, Jr. (Obsioma, Jr.) of estafa punished under Article 315, paragraph 1(b) of the Revised Penal Code.[9] The trial court found that Ong and Obsioma, Jr. failed to pay Metropolitan Bank and Trust Company a total of ₱344,752.20, in violation of their trust receipt agreement with the bank.[10] They were sentenced to suffer the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal* as maximum.[11]

Ong filed a Motion for Reconsideration,[12] which the trial court denied in its Order[13] dated March 31, 2000.

Ong filed a Notice of Appeal,[14] which the trial court gave due course.[15] The trial court then transmitted the case records to the Court of Appeals.[16]

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[4] *Id*. at 61.

[5] *Id*. at 46.

[6] *Id*. at 47.

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

[8] RTC records, pp. 183–193. The Decision was penned by Presiding Judge Jose P. Soberano, Jr.

[9] *Id*. at 193.

[10] *Id*. at 188-189.

[11] *Id*. at 193.

[12] *Id*. at 199-206.

[13] *Id*. at 237. The Order was penned by Pairing Judge Victorino U. Montecillo.

[14] *Id*. at 241.

[15] *Id*. at 242.

[16] *Id*. at 245-246.

In the Decision[17] dated November 29, 2001, the Court of Appeals affirmed *in toto* the trial court's Decision.[18] The Court of Appeals likewise denied Ong's Motion for Reconsideration and Supplemental Motion for Reconsideration in its Resolution[19] dated April 14, 2003 for raising mere rehashed arguments.[20]

The Court of Appeals then issued an Entry of Judgment,[21] declaring that the case became final and executory on May 15, 2003. The Court of Appeals based the date of finality on the date of receipt indicated in the registry return card[22] corresponding to the mail sent to Ong's former counsel, Zosa & Quijano Law Offices. Based on the registry return card, Zosa & Quijano Law Offices received on April 29, 2003 a copy of the Court of Appeals' Resolution denying Ong's Motion for Reconsideration.[23]

On March 22, 2004, the trial court received the original records of the case, the Decision, and the Entry of Judgment issued by the Court of Appeals. In view thereof, the trial court, then presided by Judge Gabriel T. Ingles, ordered the arrest of Ong.[24]

Almost six (6) years after, or on February 12, 2010 at about 10:30 p.m., Ong was arrested at Ralphs Wines Museum located at No. 2253 Aurora Boulevard, Tramo, Pasay City.[25] He was

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[17] *Rollo,* pp. 29-39. The Decision was penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Cancio C. Garcia (Chair) (former Justice of this court) and Bienvenido L. Reyes (currently a Justice of this court) of the Second Division.

[18] *Id*. at 38.

[19] *Id*. at 41.

[20] *Id*.

[21] CA *rollo*, p. 208.

[22] *Id*. at 206.

[23] *See* CA *rollo*, p. 206.

[24] RTC records, p. 268.

[25] *Id*. at 274.

initially ordered committed to the Cebu City Jail[26] but is currently serving his sentence at the New Bilibid Prison.[27]

On May 6, 2010, Ong filed before this court a Petition for *Certiorari*, Prohibition, and Mandamus with application for issuance of preliminary and/or mandatory injunction.[28]

In the Resolution[29] dated June 16, 2010, this court ordered respondents to comment on Ong's Petition.[30]

In the meantime, Ong filed the Urgent Motion for Preliminary Mandatory Injunction or, Alternatively, for Bail,[31] which this court noted in the Resolution[32] dated July 28, 2010.

The People of the Philippines then filed a Comment[33] on the Petition for *Certiorari*, Prohibition, and Mandamus. It also commented on Ong's Motion for Preliminary Injunction or, Alternatively, for Bail.[34]

Ong replied to the Comment on the Petition[35] and to the Comment on the Motion for Preliminary Injunction or, Alternatively, for Bail.[36] He then filed a supplemental pleading to his Reply.[37]

In his Petition for *Certiorari*, Ong alleges that his counsel never received a copy of the Court of Appeals' Resolution denying

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[26] *Id*. at 282.

[27] *Rollo*, pp. 265 and 272-273.

[28] *Id*. at 3.

[29] *Id*. at 68-69.

[30] *Id*. at 68.

[31] *Id*. at 77-86.

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

[33] *Id*. at 111-129.

[34] *Id*. at 132-146.

[35] *Id*. at 155-166.

[36] *Id*. at 171-178.

[37] *Id*. at 190-206.

his Motion for Reconsideration. Consequently, the Decision of the Court of Appeals never became final and executory, and the Court of Appeals gravely abused its discretion in issuing the Entry of Judgment. Judge Gabriel T. Ingles likewise gravely abused his discretion in issuing a warrant for his arrest and ordering his commitment to the Cebu City Jail.[38]

Assuming that his former counsel received a copy of the Court of Appeals' Resolution, Ong argues that his counsel was grossly negligent in failing to appeal the Court of Appeals' Resolution. This gross negligence allegedly deprived him of due process and, therefore, should not bind him.[39]

Considering the alleged grave abuse of discretion of the Court of Appeals and the trial court, Ong prays that this court issue a Writ of Preliminary Mandatory Injunction for him to be "liberated from his . . . illegal imprisonment."[40] In the alternative, he prays that this court allow him to post bail for his provisional liberty while this court decides his Petition for *Certiorari*.[41]

In its Comment, the People of the Philippines argues that the registry return card "carries the presumption that 'it was prepared in the course of official duties that have been regularly performed [and must be] presumed to be accurate unless proven otherwise.'"[42] In this case, the registry return card corresponding to the copy of the Court of Appeals' Resolution sent to Ong's former counsel indicates that his counsel received the Resolution on April 29, 2003. This date, therefore, must be presumed to be the date of receipt of the Resolution. Since Ong failed to appeal within the reglementary period, the Court of Appeals' Decision became final and executory and the Court of Appeals correctly issued the Entry of Judgment.[43]

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[38] *Id*. at 17-19.

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

[40] *Id*. at 21.

[41] *Id*. at 85.

[42] *Id*. at 119.

[43] *Id*. at 118-120.

Even assuming that his former counsel did not receive a copy of the Resolution, the People argues that this negligence bound Ong under the rule that the negligence of counsel binds the client.[44]

With respect to Ong's prayer for issuance of a Writ of Preliminary Mandatory Injunction, the People contends that he "failed to point out [the] specific instances where the [Court of Appeals and the trial court] had committed grave abuse of discretion[.]"[45] Consequently, Ong is not entitled to the Writ prayed for.[46]

On Ong's prayer to be allowed to post bail, the People argues that the grant of bail is premised on the uncertainty of whether an accused is guilty or innocent.[47] Considering that Ong's conviction had already removed this uncertainty, "it would, generally speaking, be absurd to admit [Ong] to bail."[48]

The issues for this court's resolution are:

(1) Whether the Court of Appeals gravely abused its discretion in issuing the entry of judgment;

(2) Whether the trial court gravely abused its discretion in issuing the warrant of arrest and commitment order against petitioner Henry Ong Lay Hin; and

(3) Whether petitioner Henry Ong Lay Hin's former counsel was grossly negligent.

This petition should be denied.

I

There is no grave abuse of discretion in this case

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[44] *Id*. at 122-125.

[45] *Id*. at 126.

[46] *Id*. at 127.

[47] *Id*. at 143, citing *Obosa v. Court of Appeals*, 334 Phil. 253, 273-274 (1997) [Per *J*. Panganiban, Third Division].

[48] *Id*.

Grave abuse of discretion is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[49]

In the present case, petitioner failed to prove the Court of Appeals' and trial court's grave abuse of discretion.

The registry return card is the "official . . . record evidencing service by mail."[50] It "carries the presumption that it was prepared in the course of official duties that have been regularly performed [and, therefore,] it is presumed to be accurate, unless proven otherwise[.]"[51]

Petitioner failed to rebut this presumption.

The affidavits of petitioner's wife and mother-in-law, Mary Ann Ong and Nila Mapilit, stating that petitioner's former counsel told them that the law office never received a copy of the Resolution,[52] are inadmissible in evidence for being hearsay.[53] Moreover, contrary to petitioner's false claim, his former counsel had notice that the Court of Appeals denied the Motion for Reconsideration as early as April 21, 2004 when his counsel received a copy of the trial court's Order directing the issuance of a warrant of arrest against petitioner.[54]

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[49] *Lagua v. The Hon. Court of Appeals*, G.R. No. 173390, June 27, 2012, 675 SCRA 176, 181 [Per *J.* Sereno (Now *C.J.*), Second Division].

[50] *Eureka Personnel & Management Services, Inc. v. Valencia,* 610 Phil. 444, 453 (2009) [Per *J.* Brion, Second Division].

[51] *Id*. at 453-454.

[52] *Rollo*, p. 63.

[53] RULES OF COURT, Rule 130, Sec. 36 provides:

Section 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

[54] RTC records, p. 269. The registry return card addressed to Atty. Francis M. Zosa was attached at the back of p. 269 of the RTC records.

With petitioner failing to rebut this presumption, it must be presumed that his former counsel received a copy of the Resolution on April 29, 2003 as indicated in the registry return card. The 15-day period to appeal commenced from this date.[55] Since petitioner did not file an Appeal within 15 days from April 29, 2003, the Decision became final and executory on May 15, 2003.

Consequently, the Court of Appeals did not gravely abuse its discretion in issuing the Entry of Judgment, which declared petitioner's conviction final and executory as of May 15, 2003. Under Rule 51, Section 10 of the Rules of Court on "Judgment," "if no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry."

As for the trial court, it likewise did not gravely abuse its discretion in issuing the arrest warrant against petitioner and ordering his commitment to the Cebu City Jail. Since the Court of Appeals had already issued the Entry of Judgment and had remanded to the trial court the original records of the case, it became the trial court's duty to execute the judgment.

II

The negligence of petitioner's former counsel bound him

The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules.[56]

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[55] RULES OF COURT, Rule 122, Sec. 6 provides:

Section 6. *When appeal to be taken*. — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel at which time the balance of the period begins to run.

[56] *Bejarasco, Jr. v. People,* G.R. No. 159781, February 2, 2011, 641 SCRA 328, 330 [Per *J.* Bersamin, Third Division].

The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."[57]

The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.

It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.

The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.

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[57] *Id*. at 331.

But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

Thus, in *Bejarasco, Jr. v. People*,[58] this court reiterated:

> For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.[59]

In *Bejarasco, Jr.*, Peter Bejarasco, Jr., failed to file a Petition for Review before the Court of Appeals within the extended period prayed for. The Court of Appeals then dismissed the Appeal and issued an Entry of Judgment. His conviction for grave threats and grave oral defamation became final, and a warrant for his arrest was issued.[60]

In his Petition for Review on *Certiorari* before this court, Peter Bejarasco, Jr. argued that his counsel's negligence in failing to file the Appeal deprived him of due process.[61]

This court rejected Peter Bejarasco, Jr.'s argument, ruling that "[i]t is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and

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[58] G.R. No. 159781, February 2, 2011, 641 SCRA 328 [Per *J.* Bersamin, Third Division].

[59] *Id.* at 331.

[60] *Id.* at 329-330.

[61] *Id.* at 330.

developments of his case[.]"[62] "[T]o merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough."[63]

This court noted the 16 months from the issuance of the Entry of Judgment and the 22 months from the issuance of the trial court's Decision before Peter Bejarasco, Jr. appealed his conviction.[64] According to this court, "[h]e ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the [trial court] handed down the dismissal of his appeal without [his counsel] having updated him on the developments[.]"[65]

In the present case, petitioner took almost seven (7) years, or almost 84 months, from the Court of Appeals' issuance of the Resolution denying his Motion for Reconsideration to file a Petition before this court. As this court ruled in *Bejarasco, Jr.*, petitioner ought to have been sooner alerted of the "unreasonably long time"[66] the Court of Appeals was taking in resolving his appeal. Worse, he was arrested in Pasay City, not in Cebu where he resides. His failure to know or to find out the real status of his appeal "rendered [petitioner] undeserving of any sympathy from the Court *vis-a-vis* the negligence of his former counsel."[67]

We fail to see how petitioner could not have known of the issuance of the Resolution. We cannot accept a standard of negligence on the part of a client to fail to follow through or address counsel to get updates on his case. Either this or the alternative that counsel's alleged actions are merely subterfuge to avail a penalty well deserved.

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[62] *Id*. at 331.

[63] *Id*.

[64] *Id*.

[65] *Id*.

[66] *Id*.

[67] *Id*. at 332.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *del Castillo,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192270. January 26, 2015]

IRENE D. OFILADA, *petitioner, vs.* **SPOUSES RUBEN ANDAL and MIRAFLOR ANDAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); HAS EXCLUSIVE AND ORIGINAL JURISDICTION OVER ALL AGRARIAN DISPUTES.—** [T]he DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and has exclusive original jurisdiction over all matters involving the implementation of agrarian reform. As DAR's adjudicating arm, it is the DARAB that has exclusive and original jurisdiction involving all agrarian disputes [as defined under] Republic Act (RA) No. 6657, Section 3(d). x x x The term also "refers to any controversy relating to, among others, tenancy over lands devoted to agriculture."

2. **ID.; ID.; ID.; ID.; TENANCY RELATIONSHIP MUST BE SUFFICIENTLY ESTABLISHED; ELEMENTS.—** [F]or the DARAB to have jurisdiction over the case, there must be a tenancy relationship between the parties. Evidence is necessary to prove the allegation of tenancy. "The principal factor in

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[*] Designated acting member per S.O. No. 1910 dated January 12, 2015.

determining whether a tenancy relationship exists is intent. Tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land. It is also a legal relationship." x x x The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. For tenancy to be proven, all indispensable elements must be established, the absence of one or more requisites will not make the alleged tenant a *de facto* one. These are: 1) the parties are the landowner and the tenant; 2) the subject is agricultural land; 3) there is consent by the landowner; 4) the purpose is agricultural production; 5) there is personal cultivation; and 6) there is sharing of the harvests. x x x [Even then,] the Court stresses "that it is not unusual for a landowner to receive the produce of the land from a caretaker who sows thereon. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy."

3. ID.; ID.; ID.; ABSENT ANY TENURIAL RELATIONSHIP, SUMMARY ACTION FOR EJECTMENT IS COGNIZABLE BY THE REGULAR COURTS.— *The tenancy relationship between the former owners of the properties and the [respondent] spouses Andal was severed prior to [petitioner] Irene's purchase of the [said properties]. No such [tenancy] relationship was subsequently created between Irene and the spouses Andal. x x x* [T]he Court holds that absent any tenurial relationship between them, the spouses Andal's possession of Irene's properties was by mere tolerance of the latter. The action to dispossess the spouses Andal therefrom is therefore a clear case of summary action for ejectment cognizable by the regular courts.

APPEARANCES OF COUNSEL

Elsa de Guzman for petitioner.
Rolando Roldan for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the July 13, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV[3] No. 101603 which: (1) granted the Petition for Review[4] filed therein; (2) reversed and set aside the August 28, 2007 Decision[5] of the Regional Trial Court (RTC), Lucena City, Branch 56 in SPEC. CIV. ACTION 2007-01-A, affirming *in toto* the February 27, 2007 Decision[6] of the Municipal Trial Court (MTC) of San Antonio, Quezon in Civil Case No. 188 which, in turn, ordered the ejectment of respondents spouses Ruben Andal and Miraflor Andal (spouses Andal) from the properties of petitioner Irene Ofilada (Irene); and, (3) declared the said MTC Decision null and void for lack of jurisdiction.

Also questioned in this Petition is the CA's May 6, 2010 Resolution[7] denying Irene's Motion for Reconsideration of the assailed CA Decision.

Factual Antecedents

Irene, together with her husband Carlos Ofilada (Carlos), bought from the heirs of Teresita Liwag (Teresita) a 27,974-square meter parcel of land principally planted with rambutan,

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[1] *Rollo,* pp. 9-42.

[2] CA *rollo,* pp. 196-208; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr.

[3] SP in some parts of the records.

[4] *Id.* at 8-22.

[5] *Id.* at 131-136; penned by Judge Norma Chionglo-Sia.

[6] *Id.* at 95-104; penned by Acting Judge Felix A. Caraos.

[7] *Id.* at 278-279; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Hakim S. Abdulwahid.

a number of coconut trees and other fruit-bearing plants located in *Barrio* Puri, Tiaong, Quezon. The sale is evidenced by a February 13, 1997 Extra-Judicial Settlement of Estate with Absolute Sale[8] wherein respondent Miraflor Andal (Miraflor), who brokered the sale of the property, signed as 'tenant.' Apparently, ten days prior to the sale, Miraflor appeared before Anastacio Lajara (Anastacio), the then *Barangay* Agrarian Reform Council (BARC) Chairman of *Barangay* Puri, San Antonio, and executed a *Pagpapatunay*[9] stating that:

> Sa kinauukulan:
>
> Ito ay pagpapatunay na si Miraflor Andal ay kusang[-]loob na dumulog sa aking tanggapan upang ipagbigay[-]alam na ang lupa na pag-aari ni TERESITA LIWAG x x x ay walang "tenant" o magtatrabaho at hiniling niya na ang nasabing lupa ay mapalipat sa pangalan ng mga bumili na walang iba kundi sina Carlos at Irene Ofilada.
>
> Pinagtitibay nya na wala na siyang paghahabol na ano man laban sa may-ari o kahalili nito sa karapatan sapagkat siya ay tumanggap na ng kaukulang halaga hinggil sa naging pagtatrabaho niya sa nasabing lupa at gayon din ang kanyang mga magulang.
>
> SA KATUNAYAN NG LAHAT NG ITO ay ako ay nagbibigay ng pahintulot na ang nasabing lupa ay mapagbili na at mapatala sa bagong may-ari na ligtas sa ano mang pananagutan.[10]

Two weeks after the sale or on February 27, 1997, Miraflor, with the consent of her husband, respondent Ruben Andal (Ruben), executed a *Sinumpaang Salaysay*[11] wherein she acknowledged Irene and Carlos as the new owners of the property. While it was stated therein that she will continue to take care of the property, she nevertheless waived any tenancy rights that she and her husband might have over the land, *viz.*:

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[8] *Rollo,* pp. 64-66.

[9] *Id.* at 69.

[10] *Id.*

[11] *Id.* at 68.

1. NA AKO ang [n]agtatrabaho o "tenant" sa lupang pag-aari ni TERESITA LIWAG at ang nasabing lupa ay matatagpuan sa Brgy. Puri, San Antonio, Quezon x x x

2. NA AKO ay kusang loob na nag-alok sa tagapagmana ng may-ari ng lupa na pinangatawanan ni Ginoong JOSE LIWAG na ipagbili na ang nasabing lupa sa mag-asawang CARLOS OFILADA at IRENE OFILADA sapagkat magpapatuloy naman ang aking pangangalaga sa nasabing lupa;

3. NA AKO at ang aking asawa ay kusang loob na sumang[-]ayon na ang Titulo ng [na]sabing lupa ay mapalipat sa mga bumili at simula sa araw na ito ay matahimik kong isinusulit ang pamomosesyon sa mga bagong may-ari;

4. NA kami ay kusang[-]loob na tumatalikod na sa karapatan ko bilang "tenant" na kahit kailan [ay] hindi na maghahabol laban sa dating may-ari o sa kaniyang mga tagapagmana sapagkat wala silang ano mang pananagutan sa amin at gayon[din] ang bagong may-ari na mag-asawang CARLOS OFILADA at IRENE OFILADA;[12]

Eventually, the land was registered in the names of Irene and Carlos.[13]

Eight years later or in October 2005, Irene filed against the spouses Andal a Complaint[14] for Ejectment and Damages before the MTC of San Antonio, Quezon. She averred that aside from the aforementioned property, she and Carlos also acquired an 8,640-square meter ricefield located in Pulo, San Antonio, Quezon. For humanitarian reasons, she acceded to the spouses Andal's request to take care of her two parcels of land, provided that they would not be considered as tenants. To stress the fact that neither she nor the spouses Andal intended that the latter be deemed as tenants, Irene pointed to the following: (1) the condition for her purchase of the property in Tiaong that the same should not have any tenants; and (2) Miraflor's execution

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[12] *Id*.

[13] *Id*. at 63.

[14] CA *rollo*, pp. 23-28; docketed as Civil Case No. 188.

of a *Sinumpaang Salaysay* wherein she waived any tenancy rights that she and her husband might have over the said property.

In their Answer,[15] the spouses Andal denied Irene's allegations and claimed that they were tenants of Irene's predecessor-in-interest and continued to be such despite the transfer of ownership of the properties to Irene. They likewise contended that since the suit is an action to dispossess them as tenants, it is not the MTC which has jurisdiction over the complaint but the Department of Agrarian Reform Adjudication Board (DARAB).

Rejecting the tenancy claim, Irene averred in her Memorandum[16] that her real properties are not covered by agrarian reform laws as they are within the retention limit allowed by law. She again stressed that the spouses Andal had already voluntarily surrendered their rights as tenants way back in 1997 as evidenced by the *Pagpapatunay* and the *Sinumpaang Salaysay*. She added the said spouses voluntarily waived their rights and received ₱1.1 million as commission for brokering the sale of the Tiaong property to her. This was after Irene made clear that the sale would not materialize and, consequently spouses Andal would not get the commission, if the property has tenants. Irene averred that the spouses Andal's receipt of the said amount of money, being advantageous to them, is a valid ground for termination of tenancy relations.

Ruling of the Municipal Trial Court

Prior to the preliminary conference, the MTC heard the respective sides of the parties for a preliminary determination of the existence of tenancy.

The spouses Andal, in support of their claim that the controversy should be resolved by the DARAB because of the issue of tenancy, submitted the following evidence to prove their status as Irene's tenants: (1) their December 19, 2005 Affidavit[17] attesting that:

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[15] *Id.* at 29-33.

[16] *Id.* at 34-37.

[17] *Id.* at 70-71.

a) they agreed to act as agents for the sale of the lands on the condition that they would remain as tenants; b) they personally cultivated Irene's lands and; c) they have been receiving ¼ shares of the proceeds of the sales of the coconut, rambutan, and harvested *palay*; (2) the December 19, 2005 Affidavit[18] of Anastacio corroborating the spouses Andal's statements in their affidavit of even date; (3) a receipt[19] dated July 27, 2005 showing that Irene received from the spouses Andal ₱9,694.00 as her share in the harvest equivalent to 30 sacks of *palay* and; 4) a February 27, 1997 Affidavit of Landholding[20] executed by Irene and Carlos, the second paragraph of which provides:

2. That we hereby testify that said parcel of land containing an area of 27,974 Square Meters is the only parcel of agricultural land registered in our names; **and we hereby agree that the same tenant Miraflor Andal, will continue as a tenant, over the said parcel of land**. (Emphasis supplied)

On the other hand, Irene insisted that the spouses Andal are not tenants but mere caretakers of her lands. She disputed the documentary evidence of the said spouses as follows: (1) it is the *Pagpapatunay* issued by Anastacio in 1997 and furnished the Registry of Deeds of Lucena City and Department of Agrarian Reform (DAR) which must be considered as more credible evidence over his apparently fabricated affidavit executed at a later time (2005); (2) the share in the produce of the lands as reflected in the receipt was the only share given to her by the spouses Andal throughout the eight years that they took care of her properties; and, (3) the copy of the Affidavit of Landholding presented by the spouses Andal contained in the second paragraph thereof an insertion made through a manual typewriter. Irene claimed that the said insertion which reads "*and we* [Irene and Carlos] *hereby agree, that the same tenant Miraflor Andal, will continue as a tenant, over the said parcel of land,*" was

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

[19] *Id*. at 76.

[20] *Rollo,* p. 71.

made without her knowledge and consent. In fact, her copy[21] of the said document does not contain such inserted portion.

In its August 14, 2006 Order,[22] the MTC found no *prima facie* showing of tenancy relations between the parties and proceeded with the case.

On February 27, 2007, the MTC rendered its Decision[23] holding that spouses Andal failed to adduce proof that they are tenants. It gave weight to the *Pagpapatunay* issued by Anastacio in 1997 as against the affidavit he executed in 2005 which it found ambivalent as to whether spouses Andal are working as tenants on the lands of Irene. The MTC did not also accord any evidentiary weight to the copy of the Affidavit of Landholding presented by spouses Andal because of the doubtful insertion. Hence, it concluded that the spouses Andal were in possession of the properties by mere tolerance of Irene. It ultimately ruled:

> WHEREFORE, on the basis of the foregoing findings, the Court hereby renders judgment in favor of the plaintiff and against the defendants, ordering:
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> a) Defendants and all other persons living in said premises without permission of the plaintiff, to vacate and restore to the plaintiff the peaceful possession and occupation of the landholdings in question;
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> b) Defendants to pay the plaintiff the amount of ₱30,000.00 as attorney's and appearance fees[;]
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> c) Defendants to pay the plaintiff the amount of ₱80,000.00 as actual damages.
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> SO ORDERED.[24]

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[21] *Id*. at 70.

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

[23] *Id*. at 95-104.

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

Ruling of the Regional Trial Court

Resolving the appeal of the spouses Andal, the RTC in its August 28, 2007 Decision[25] affirmed *in toto* the MTC ruling. The motion for reconsideration thereto was also denied in the RTC Resolution[26] dated November 22, 2007.

Ruling of the Court of Appeals

The CA, on the other hand, took a different view of the case. In its assailed Decision[27] of July 13, 2009, the CA ratiocinated that since the existence of tenancy relations between the previous owners of the properties and the spouses Andal is undisputed, the question of whether the said spouses may be dispossessed therefrom constitutes an agrarian dispute despite the severance of such relations. This is considering that severance of the tenurial arrangement does not render the action beyond the ambit of an agrarian dispute and, hence, jurisdiction over the same remains with the DARAB. In support of its conclusion, the CA cited the cases of *Rivera v. David*[28] and *Spouses Amurao v. Spouses Villalobos.*[29]

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition for review is GRANTED. The assailed Decision of the Regional Trial Court of Lucena City, Branch 56, in Special Civil Case No. 2007-01-A, is hereby REVERSED and SET ASIDE. The Decision dated 27 February 2007 of the Municipal Trial Court of San Antonio, Quezon in Civil Case No. 188, is declared NULL and VOID for lack of jurisdiction.

SO ORDERED.[30]

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[25] *Id*. at 131-136.

[26] *Id*. at 146-147.

[27] *Id*. at 196-208.

[28] 518 Phil. 445 (2006).

[29] 524 Phil. 762 (2006).

[30] CA *rollo,* pp. 207-208.

Irene filed a Motion for Reconsideration,[31] which was denied in the CA Resolution[32] dated May 6, 2010.

Hence, this Petition.

The Issue

Forcible entry and unlawful detainer cases fall under the exclusive original jurisdiction of the metropolitan trial courts, municipal trial courts, and the municipal circuit trial courts.[33] On the other hand, the DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and has exclusive original jurisdiction over all matters involving the implementation of agrarian reform.[34] As DAR's adjudicating arm,[35] it is the DARAB that has exclusive and original jurisdiction involving all agrarian disputes. Republic Act (RA) No. 6657, Section 3(d) defines an 'agrarian dispute' as follows:

> (d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.
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> It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

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[31] *Id.* at 222-241.

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

[33] BATAS PAMBANSA BILANG 129, Section 33, as amended by Republic Act No. 7691.

[34] REPUBLIC ACT NO. 6657 known as the Comprehensive Agrarian Reform Law of 1988, Section 50.

[35] EXECUTIVE ORDER 129-A, Modifying Order 129 Reorganizing and Strengthening the Department of Agrarian Reform and Other Purposes, Section 13.

The term also "refers to any controversy relating to, among others, tenancy over lands devoted to agriculture."[36]

Significantly, Rule II of the 2009 DARAB Rules of Procedure reads:

> SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* – The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under R.A. No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, Presidential Decree No. 27 and other agrarian laws and their Implementing Rules and Regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
>
> a. The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), as amended, and other related agrarian laws; x x x
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> x x x x x x x x x
>
> d. Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

With the above points on jurisdictions having been laid, the Court now resolves the crucial issue in the case of whether tenancy relationship between Irene and the spouses Andal exists as to strip off the MTC of its jurisdiction over Irene's suit for unlawful detainer.

Our Ruling

We grant the Petition.

The factual circumstances in Rivera and Amurao clearly make out cases involving agrarian dispute.

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[36] *Mendoza v. Germino*, G.R. No. 165676, November 22, 2010, 635 SCRA 537, 545.

As the CA relied on *Rivera* and *Amurao,* it is wise to revisit the factual milieu of the said cases.

In its assailed Decision, the CA quoted the following pronouncement which was restated[37] in *Rivera*, *viz*:

> Even if the tenurial arrangement has been severed, the action still involves an incident arising from the landlord and tenant relationship. Where the case involves the dispossession by a former landlord of a former tenant of the land claimed to have been given as compensation in consideration of the renunciation of the tenurial rights, there clearly exists an agrarian dispute. On this point the Court has already ruled:
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>> Indeed, Section 21 of Republic Act No. 1199, provides that 'all cases involving the dispossession of a tenant by the landlord or by a third party and/or the settlement and disposition of disputes arising from the relationship of landlord and tenant … shall be under the original and exclusive jurisdiction of the Court of Agrarian Relations.' This jurisdiction does not require the continuance of the relationship of landlord and tenant – at the time of the dispute. The same may have arisen, and oftentimes arises, precisely from the previous termination of such relationship. If the same existed immediately, or shortly, before the controversy and the subject matter thereof is whether or not said relationship has been lawfully terminated, or if the dispute otherwise springs or originates from the relationship of landlord and tenant, the litigation is (then) cognizable only by the Court of Agrarian Relations…[38]

In the said case, Agustin Rivera (Agustin) was in possession of a 1.8-hectare portion of the 5-hectare lot owned in common by the heirs of Cristino and Consolacion David, and these heirs demanded that he vacate the premises. Thus, Agustin filed a Complaint to Maintain Peaceful Possession before the Provincial Agrarian Reform Adjudication Board (PARAB). He averred that his possession of the property was, originally, as registered tenant

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[37] The pronouncement was made by the Court in *David v. Rivera,* 464 Phil. 1006 (2004), a case between the same parties and which involves the same parcel of land as in *Rivera.*

[38] CA *rollo*, pp. 206-207.

of the said heirs' predecessor-in-interest, Cristino, as evidenced by the certification issued by the Municipal Agrarian Reform Office (MARO). Subsequently in 1957, he became the lot owner because the spouses Cristino and Consolacion David gave him the 1.8-hectare land as his 'disturbance compensation,' in exchange for the renunciation of his tenurial rights. On the other hand, Nemesio David (Nemesio), one of the heirs, argued that the DAR has no jurisdiction over the case as the same only involves the issue of ownership of the land.

The DAR (thru the PARAB and the DARAB) assumed jurisdiction over the case and went on to render judgments in favor of Agustin. The CA, however, ruled that the DAR no longer had any jurisdiction on the ground that the alleged tenancy, per Agustin's own admission, had already ended in 1957. Thus, it set aside the respective decisions of the PARAB and the DARAB. The Court, though, did not agree with the CA on the issue of jurisdiction. Although it denied Agustin's appeal because he was not able to sufficiently prove his ownership of the land, DAR's jurisdiction over the case was nevertheless upheld. And it was at that point that the above-quoted pronouncement was restated.

Indeed in *Rivera,* the severance of the tenancy relations when the suit was filed did not matter because the prior agricultural tenancy served as the juridical tie which compelled the characterization of the controversy as an agrarian dispute. This is due to the fact that the land from which Agustin was being dispossessed was claimed to have been owned by him by way of disturbance compensation given to him as a former tenant by his former landlord.

On the other hand, in *Amurao*, the spouses Amurao bought in 1987 from a certain Ruperto Endozo a parcel of land which was then tenanted by the spouses Villalobos. The spouses Amurao allowed the spouses Villalobos to continue working on the land until such time that their need for the same arises. In 1994, the therein parties executed a *Kasulatan* in which the spouses Villalobos promised to surrender the possession of the lot should the spouses Amurao need it, while the latter, in return, bound

themselves to give the spouses Villalobos a 1,000-sqm. portion of the land. But because the spouses Villalobos reneged on their promise in accordance with the *Kasulatan*, the spouses Amurao filed an ejectment case against them before the Municipal Circuit Trial Court (MCTC). On the defense that the issue concerns an agrarian dispute, the spouses Villalobos questioned the trial court's jurisdiction. Both the MCTC and the RTC upheld their jurisdiction over the case but the CA ruled otherwise.

Before this Court, the spouses Amurao argued that the tenancy relationship between them and the spouses Villalobos was terminated upon the execution of the *Kasulatan.* Hence, there can be no agrarian dispute between them over which the DAR can take cognizance of. The Court held:

> The instant case undeniably involves a controversy involving tenurial arrangements because the *Kasulatan* will definitely modify, nay terminate the same. Even assuming that the tenancy relationship between the parties had ceased due to the *Kasulatan*, there still exists an agrarian dispute because the action involves an incident arising from the landlord and tenant relationship.
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> x x x x x x x x x
>
> In the case at bar, petitioners' claim that the tenancy relationship has been terminated by the *Kasulatan* is of no moment. As long as the subject matter of the dispute is the legality of the termination of the relationship, or if the dispute originates from such relationship, the case is cognizable by the DAR, through the DARAB. The severance of the tenurial arrangement will not render the action beyond the ambit of an agrarian dispute.[39]

To restate, what brought *Rivera* under the ambit of an agrarian dispute is the fact that the land from which Agustin was being dispossessed of by the heirs of his former landlord is claimed to have been given to him by the said former landlord as consideration for the renunciation of his tenurial rights. While in *Amurao,* it was the issue of whether the *Kasulatan* entered into by the parties terminated the landlord-tenant relationship

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[39] *Spouses Amurao v. Spouses Villalobos, supra* note 29 at 772-773.

between them. Clearly, as the action in both cases involved an incident arising from landlord-tenant relationship, the severance or alleged severance of such relationship did not take them beyond the ambit of an agrarian dispute and, consequently, it is DAR which has jurisdiction over the said cases.

Rivera and Amurao are not on all fours with the present case.

Here, Irene claims that there can be no agrarian dispute since there exists no landlord-tenant relationship between her and the spouses Andal. If ever such a relationship existed, it was between the former owner of the properties and the spouses Andal and the same had already been renounced by Miraflor prior to Irene's acquisition of the properties. The CA, however, ruled that even if the landlord-tenant relationship between the previous owner and the spouses Andal had already ceased, the action to dispossess the latter from the subject properties still involves an agrarian dispute, as held in *Rivera* and *Amurao.*

Suffice it to say, however, that the present case is not on all fours with *Rivera* and *Amurao.*

As already discussed, in *Rivera*, the land involved is claimed to have been given to the former tenant by the former landlord by way of disturbance compensation. Hence, even if the landlord-tenant relationship was asserted to have been severed as early as 1957, the Court considered the action as arising from an agrarian dispute, the rightful possession of the land being an incident of such previous landlord-tenant relationship. In the present case, there is no claim that the subject properties were given to the spouses Andal by their former landlord as a form of disturbance compensation. While the spouses Andal in this case refuse to surrender the properties to Irene on the ground that they are tenants of the same just like in *Amurao*, it cannot be gainsaid that in *Amurao*, the tenancy relations between the former owners of the property involved therein and the spouses Villalobos, had, undisputedly, been continued by and between the said spouses and the spouses Amurao when the latter acquired the property. And it was on that supposition that the Court held

that even if the *Kasulatan* executed by the spouses Amurao and the spouses Villalobos terminated the tenancy relationship between them, the action of the former to dispossess the latter from the property tenanted involved an agrarian dispute. However, in this case, unlike in Amurao the severance of the tenancy relations between the former owners of the properties and the spouses Andal, as well as the non-existence of a similar relationship between the said spouses and Irene as the new owner, were sufficiently shown as will be discussed below. Hence, the said pronouncement made in *Amurao* finds no application in this case.

The tenancy relationship between the former owners of the properties and the spouses Andal was clearly severed prior to Irene's purchase of the same; no such relationship was subsequently created between Irene and the spouses Andal.

Certainly telling are the *Pagpapatunay* and the *Sinumpaang Salaysay* which were voluntarily executed and never impugned by the spouses Andal. Both contain express declarations that at the time Irene and her husband bought the property, the tenancy then existing between the heirs of Teresita as former owners and the spouses Andal as tenants had already ceased, and that no tenancy relations would continue between the latter and the new owner, Irene. Notably, the *Sinumpaang Salaysay,* being a public document, is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity.[40] The spouses Andal are bound by their admissions against their own interest.

Indeed, while a tenancy relationship cannot be extinguished by the sale, alienation, or transfer of the legal possession of the landholding,[41] the same may nevertheless be terminated due to

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[40] *Macaspac v. Puyat, Jr.*, 497 Phil. 161, 174 (2005).

[41] REPUBLIC ACT NO. 3844, known as The Agricultural Reform Code, as amended by Republic Act Nos. 6389 and 10374. Section 10. *Agricultural*

circumstances more advantageous to the tenant and his/her family.[42] Here, records show that Miraflor, who brokered the sale between the heirs of Teresita and Irene, voluntarily executed, days prior to the Extrajudicial Settlement of Estate with Absolute Sale, her *Pagpapatunay* before the BARC Chairman stating that she and her parents have already received a 'sufficient consideration' for her to release her former landlord and the purchaser of the lot from liability. As later disclosed by Irene during trial, such 'sufficient consideration' amounted to ₱1.1 million by way of disturbance compensation, a factual allegation which was again never refuted by the spouses Andal before the lower court and was found to be an uncontroverted fact by the CA. To the Court, the said amount is adequate enough for the spouses Andal to relinquish their rights as tenants. In fine, it can be reasonably concluded that the tenancy relationship between the previous owners and the spouses Andal had already been severed.

The next question now is whether a new tenancy relationship between Irene and the spouses Andal was subsequently formed. This becomes crucial because for the DARAB to have jurisdiction over the case, there must be a tenancy relationship between the parties.[43]

Evidence is necessary to prove the allegation of tenancy. "The principal factor in determining whether a tenancy

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Leasehold Relation Not Extinguished by Expiration of Period, etc. - The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

[42] *Id.*, Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year* - The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:x x x x

(5) Voluntary surrender due to circumstances more advantageous to him and his family.

[43] *Philippine Overseas Telecommunications Corporation v. Gutierrez*, 537 Phil. 682, 691 (2006).

relationship exists is intent. Tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land. It is also a legal relationship."[44]

An allegation of tenancy before the MTC does not automatically deprive the court of its jurisdiction. Basic is the rule that:

> x x x the material averments in the complaint determine the jurisdiction of a court. x x x a court does not lose jurisdiction over an ejectment suit by the simple expedient of a party raising as a defense therein the alleged existence of a tenancy relationship between the parties. The court continues to have the authority to hear and evaluate the evidence, precisely to determine whether or not it has jurisdiction, and, if, after hearing, tenancy is shown to exist, it shall dismiss the case for lack of jurisdiction.[45]

The Court agrees with the conclusion of both the MTC and the RTC that for dearth of evidence, tenurial relationship between the parties was not sufficiently shown. Thus, the said courts correctly assumed jurisdiction over the ejectment case.

The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. For tenancy to be proven, all indispensable elements must be established, the absence of one or more requisites will not make the alleged tenant a *de facto* one. These are: 1) the parties are the landowner and the tenant; 2) the subject is agricultural land; 3) there is consent by the landowner; 4) the purpose is agricultural production; 5) there is personal cultivation; and 6) there is sharing of the harvests.[46]

The *Pagpapatunay* and the *Sinumpaang Salaysay* both support Irene's claim that she purchased the landholdings only on the condition that there will be no tenants. Her refusal to give her consent to any tenancy relationship is glaring. On the other

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[44] *Valencia v. Court of Appeals*, 449 Phil. 711, 736 (2003).

[45] *Cano v. Spouses Jumawan*, 517 Phil. 123, 129-130 (2006).

[46] *Salmorin v. Dr. Zaldivar*, 581 Phil. 531, 537 (2008); citing *Suarez v. Saul*, 510 Phil. 400, 406 (2005).

hand, the spouses Andal, in their attempt to prove tenancy, submitted their copy of the February 27, 1997 Affidavit of Landholding, which contains an inserted statement that Irene and Carlos agree "*that the same tenant Miraflor Andal, will continue as tenant, over the said parcel of land.*" However, serious doubt is cast on the authenticity of said inserted statement considering that it does not bear the respective initials/signatures of Carlos and Irene attesting their conformity thereto. More importantly, Irene's copy of the said document does not contain the same insertion.

Anent the proof of sharing of harvest, what the spouses Andal merely presented was a single receipt dated July 27, 2005 representing Irene's 'share' in the harvest. This even militates against the spouses Andal's claim of tenancy considering that they did not present the receipts for the alleged sharing system prior to 2005 or from 1997, the year when Irene purchased the land. Notably, the receipt they submitted is dated July 27, 2005 or just a few months before the filing of the complaint. To the Court's mind, such act of the spouses Andal to give Irene a share is a mere afterthought, the same having been done during the time that Irene was already making serious demands for them to account for the produce of the lands and vacate the properties. Be that as it may, the Court stresses "that it is not unusual for a landowner to receive the produce of the land from a caretaker who sows thereon. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy."[47]

In sum, the Court holds that absent any tenurial relationship between them, the spouses Andal's possession of Irene's properties was by mere tolerance of the latter. The action to dispossess the spouses Andal therefrom is therefore a clear case of summary action for ejectment cognizable by the regular courts.

WHEREFORE, the Petition is **GRANTED**. The July 13, 2009 Decision and May 6, 2010 Resolution of the Court of

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[47] *Heirs of Rafael Magpily v. De Jesus*, 511 Phil. 14, 25 (2005).

Appeals in CA-G.R. CV No. 101603 are **REVERSED and SET ASIDE**. The August 28, 2007 Decision of the Regional Trial Court, Lucena City, Branch 56 in SPEC CIV. ACTION 2007-01-A affirming *in toto* the February 27, 2007 Decision of the Municipal Trial Court of San Antonio, Quezon in Civil Case No. 188, is **REINSTATED** and **AFFIRMED**.

SO ORDERED.

Velasco,[*] *Jr. Peralta,*[**] *Mendoza,* and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194885. January 26, 2015]

C.F. SHARP CREW MANAGEMENT, INC. and REEDEREI CLAUS PETER OFFEN, *petitioners, vs.* **CLEMENTE M. PEREZ,** *respondent*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; 1996 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); CLAIM FOR DISABILITY BENEFITS; IT IS ENOUGH TO PROVE THAT THE INJURY OR ILLNESS WAS ACQUIRED DURING THE TERM OF EMPLOYMENT.—** The parties agreed in their May 22, 2000 employment contract that they will comply with the 1996 POEA-SEC. x x x Under the 1996 POEA-SEC, respondent only needed to prove that his illness was acquired during the term of his employment to support his claim for disability benefits. x x x Here, it is not disputed

[*] Per Special Order No. 1910 dated January 12, 2015.

[**] Per Raffle dated September 15, 2014.

that respondent became ill when the Rio Grande was in Singapore on November 1, 2000 or during the term of his 10-month employment contract signed on May 22, 2000. x x x The Labor Arbiter was therefore correct that respondent suffered a psychotic disorder during the term of his employment contract. We also note that respondent was not ill when he was hired by petitioners, as he passed the pre-employment medical examination. [Also,] respondent passed another medical and mental examination in Germany which proved that he was fit for sea duty.

2. **ID.; ID.; ID.; DISQUALIFICATION THEREFROM DOES NOT INCLUDE FRAUD IN CONCEALING PRE-EXISTING MEDICAL CONDITION.—** We disagree with petitioners that respondent is not entitled to disability benefits because he is guilty of fraud in concealing his pre-existing medical condition. Section 20(E) of the 1996 POEA-SEC provides: E. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or records at no cost to the seafarer. The above-quoted provision does not mention unconcealment. It only requires that the seafarer be furnished a copy of all pertinent medical records upon request.

3. **ID.; ID.; ID.; WITHOUT A DECLARATION THAT SEAFARER IS FIT TO WORK OR AN ASSESSMENT OF THE DEGREE OF DISABILITY, THE DISABILITY IS DEEMED AS PERMANENT AND TOTAL.—** The evidence on record likewise belies petitioners' claim that respondent was eventually declared fit to work by their designated doctors. x x x Without a declaration that respondent is already fit to work or an assessment of the degree of respondent's disability by petitioners' own doctors, respondent's disability is therefore permanent and total. This is equivalent to a Grade 1 impediment/disability entitling respondent to US$60,000 as permanent and total disability benefits under the 1996 POEA-SEC.

4. **ID.; NLRC RULES OF PROCEDURE; LABOR ARBITER'S DECISION; CONTENTS.—** How the Labor Arbiter awarded US$125,000 as disability benefits to respondent was not at all discussed. Needless to stress, the NLRC Rules of Procedure, past and present, require what must be contained in a Labor Arbiter's Decision: facts of the case; issue/s involved; applicable

law or rules; conclusions and the reasons therefor; and specific remedy or relief granted.

5. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER WHERE EMPLOYEE FORCED TO LITIGATE FOR PROTECTION OF RIGHT AND INTEREST.—** On the issue of attorney's fees, we have held that where an employee is forced to litigate and incur expenses to protect his right and interest, as in this case, he is entitled to an award of attorney's fees equivalent to 10% of the award. Thus, respondent is also entitled to US$6,000 as attorney's fees.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Linsangan, Linsangan & Linsangan Law Office for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review of the Decision[1] dated July 8, 2010 and Resolution[2] dated December 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP. No. 94745. The CA reinstated the Labor Arbiter's award of US$125,000 as disability benefits and 10% thereof as attorney's fees to respondent-seaman Clemente M. Perez.

The facts follow.

Petitioners C.F. Sharp Crew Management, Inc. and Reederei Claus Peter Offen hired respondent as Oiler on board the vessel M/V P&O Nedlloyd Rio Grande. The parties signed the 10-month employment contract[3] on May 22, 2000 and they agreed to comply with the 1996 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).

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[1] *Rollo*, pp. 85-97. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

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

[3] Records (Vol. I), p. 106.

Respondent's employment is also covered by a Collective Bargaining Agreement (CBA).

While the Rio Grande was in Singapore on November 1, 2000, respondent failed to report for duty. But at 9:30 a.m., he showed up at the crewmess confused. The crew got scared of him. The Master of the Rio Grande decided that respondent will be a high risk for the safety of the ship and its crew and must be repatriated.[4] Respondent was diagnosed to have acute psychosis at Gleneagles Maritime Medical Center and was declared unfit for sea duty.[5]

Respondent arrived in Manila on November 22, 2000 and petitioners referred him to Dr. Baltazar V. Reyes, Jr. Dr. Reyes's psychiatric evaluation stated that respondent did not present any psychiatric difficulty of note, and that it is best to do a psychological test and to observe respondent for another month without medication. According to Dr. Reyes, respondent felt that his illness was caused by unfair treatment from the German chief engineer. In 1996, respondent was sent home after a similar breakdown in Spain but he was able to return to work in September 1997, said Dr. Reyes. Dr. Reyes's impression is that respondent has recurrent acute psychotic disorder for it does not show all the time. He may be normal at one time but his psychotic disorder will become manifest once triggered by an outside factor, most probably by a problem with his superiors.[6]

Petitioners also referred respondent to the American Outpatient Clinic for co-management. He was likewise diagnosed with recurrent acute psychotic disorder, per the medical report[7] dated February 2, 2001 of Dr. Leticia C. Abesamis. Respondent's psychological evaluation[8] on March 1, 2001 showed that

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[4] *Id.* at 107.

[5] *Id.* at 108.

[6] *Id.* at 111-112.

[7] *Id.* at 117.

[8] *Id.* at 119-120.

respondent has an average intellectual level and no significant manifestation of personality and mental disturbances. In her letter[9] dated February 11, 2002, Psychometrician Raquel Arceta reported to Dr. Abesamis that respondent is still fit to work abroad at the time of evaluation.

Meantime, in another medical report[10] dated February 8, 2002, Dr. Abesamis stated that respondent can still go back to sea duty but recurrence of the same psychotic breakdown is possible. According to Dr. Abesamis, respondent denied that he had a psychotic breakdown in 1996.

Respondent sued the petitioners for disability benefits, moral and exemplary damages, and attorney's fees. He claimed that while he was told that he is already fit to work as seaman, the doctor refused to issue a medical certificate on the ground that he has yet to fully recover from his illness. When he sought re-employment, petitioners rejected him because of his illness. His claim for disability benefits under the CBA was also denied. Then, petitioners advised him to claim disability benefits from the Social Security System (SSS) and gave him the SSS Forms/ Medical Certificates[11] duly signed by Dr. Abesamis.

For their part, petitioners argued that respondent is not entitled to disability benefits because he concealed his pre-existing psychotic illness. According to them, respondent concealed that he was repatriated in 1996 and 1997 for psychotic episodes. They claimed that respondent is already fit to work, citing the result of his psychological examination after his repatriation. They also claimed that the CBA is not applicable because it covers disability caused by accident and that respondent is not entitled to damages and attorney's fees because they have showed good faith in dealing with him.

The Labor Arbiter ruled in favor of respondent and ordered petitioners to pay him disability benefits, sickness allowance

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[9] *Id.* at 127.

[10] *Id.* at 143.

[11] *Id.* at 72-74.

and attorney's fees. The Labor Arbiter noted that respondent suffered a psychotic disorder during the term of his employment contract. Since his illness is recurrent, his ability to work has been impaired for life and he is no longer fit to work. The Labor Arbiter also noted that Dr. Abesamis even referred respondent to the SSS to claim his disability benefits.

The NLRC reversed the Labor Arbiter's ruling but ordered petitioners to pay respondent sickness allowance. It ruled that respondent is not entitled to disability benefits since he concealed his psychotic features in his application form when he sought employment with petitioners. It noted Dr. Constantine D. Della's certification dated April 29, 1997 that respondent's history revealed psychotic features in the past. Respondent also admitted to Dr. Reyes that he is suffering from a pre-existing illness and that he was sent home in 1996 after experiencing a similar psychotic breakdown. The NLRC said that the POEA-SEC disqualifies a seaman from any compensation and benefit if he conceals a past medical condition, disability and history in the pre-employment medical examination.

The CA reversed the NLRC's ruling and reinstated the Labor Arbiter's award of disability benefits and attorney's fees to respondent. The CA no longer considered the issue of sickness allowance since it was already decided by another CA Division in a separate case.[12] The *fallo* of the assailed CA Decision reads:

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The assailed Resolutions dated 15 December 2005 and 17 March 2006, respectively, of the National Labor Relations Commission (NLRC) First Division in NLRC CA No. 041980-04 and NLRC NCR-OFW Case No. (M) 02-01-00030-00 insofar as it

[12] CA *rollo*, pp. 686-693. CA-G.R. SP No. 94166, entitled *C.F. Sharp Crew Management, Inc. and/or Reederei Claus Peter Offen v. National Labor Relations Commission and Clemente M. Perez*. The CA Decision was penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) with the concurrence of Associate Justices Fernanda Lampas Peralta and Myrna Dimaranan Vidal. Associate Justice Diosdado M. Peralta inhibited from the present case, per the Internal Resolution dated July 7, 2014.

denied the grant of disability benefits and attorney's fees, are hereby **REVERSED and SET ASIDE**. Accordingly, the Decision dated 21 September 2004 of Labor Arbiter Patricio P. Libo-on awarding [respondent] disability benefits in the amount of US$125,000 and attorney's fees in the amount of 10% of the monetary award, is hereby **REINSTATED**.

SO ORDERED.[13]

The CA ruled that respondent is no longer fit to work and his disability is permanent and total, citing Dr. Abesamis's finding that recurrence of the same psychotic disorder is possible if respondent is placed in the same situation. It considered as an admission of respondent's disability on petitioners' part when they issued to him SSS Forms/Medical Certificates duly signed by Dr. Abesamis for him to be able to claim his disability benefits from the SSS.

The CA held that respondent is not guilty of concealment since Dr. Della merely stated that respondent's history revealed psychotic features and did not confirm that he was suffering from psychotic or mood disturbance. On respondent's admission of a similar psychotic breakdown in 1996, the CA noted respondent's denial as stated in Dr. Abesamis's affidavit.

In awarding US$125,000 as disability benefits, the CA applied Section 21(a) of the CBA which reads:

DISABILITY
SECTION 21

(a) A Seafarer who suffers an injury as a result of an accident from any cause whatsoever whilst in the employment of the Managers/ Owners, including accidents occurring whilst travelling to or from the ship or as a result of marine or other similar peril, and whose ability to work is reduced as a result thereof, shall receive from the Managers/Owners in addition to her/his sick pay (Art. 16 and 17 above), a compensation as stated below:

Compensation: 1) Masters and Officers (& ratings above AB) - US$250,000

[13] *Rollo*, pp. 96-97.

2) All Ratings (AB & below) - US$125,000

Loss of profession caused by disability (accident) shall be secured by 100% of the compensation.[14]

The CA opined that respondent's psychotic disorder is an injury as a result of an accident from any cause whatsoever and developed while he was working under abusive German superiors. Respondent was also awarded attorney's fees considering that he was constrained to sue and hire a lawyer to enforce his rights.

The assailed CA Resolution denied petitioners' motion for reconsideration.

Hence, this petition which raised the following issues:

1. Whether or not the CBA or the POEA SEC is applicable for purposes of determining if x x x respondent is entitled to disability benefits;

2. Whether or not x x x respondent is disqualified from any compensation and benefits for willfully and deliberately concealing his pre-existing medical condition[;]

3. Whether or not x x x respondent is entitled to full disability [benefits] despite the "fit to work" declaration of the company-designated physician[;]

4. Whether or not x x x respondent is entitled to an award of attorney's fees despite the fact that the denial of x x x [r]espondent's claim was done in good faith and based on just and valid grounds[.][15]

The issue is: is respondent entitled to US$125,000 as disability benefits and 10% thereof as attorney's fees?

Petitioners claim that the disability provision of the CBA is not applicable since respondent suffered a mental illness and not an injury caused by an accident. They add that under Section

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[14] *Id*. at 92; records (Vol. I), p. 77.

[15] *Id*. at 51.

20(E) of the POEA-SEC respondent is disqualified from any compensation and benefit for wilfully and deliberately concealing his pre-existing medical condition. Thus, if respondent is not so disqualified, respondent is not entitled to disability benefits because he was declared fit to work by the company-designated physician. Respondent is likewise not entitled to attorney's fees because their denial of respondent's claim was done in good faith.

In his comment, respondent maintains that the CA did not commit any serious error in arriving at its Decision.

We find the petition partly meritorious and rule that respondent is entitled to US$60,000 as permanent and total disability benefits in accordance with the 1996 POEA-SEC. We disagree with the CA that respondent is entitled to the higher amount of US$125,000 under the CBA. The award of attorney's fees is also proper.

The parties agreed in their May 22, 2000 employment contract that they will comply with the 1996 POEA-SEC. Hence, we will apply the 1996 POEA-SEC and not the 2000 POEA-SEC which initially took effect on June 25, 2000 but whose implementation was suspended until the suspension was lifted on June 5, 2002.[16]

Under the 1996 POEA-SEC, respondent only needed to prove that his illness was acquired during the term of his employment to support his claim for disability benefits. Section 20 of the 1996 POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

x x x x x x x x x

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[16] *Inter-Orient Maritime, Incorporated v. Candava*, G.R. No. 201251, June 26, 2013, 700 SCRA 174, 181.

We have ruled that under the 1996 POEA-SEC, it is enough that the seafarer proves that his or her injury or illness was acquired during the term of employment to support a claim for disability benefits.[17]

Here, it is not disputed that respondent became ill when the Rio Grande was in Singapore on November 1, 2000 or during the term of his 10-month employment contract signed on May 22, 2000. The initial diagnosis at the Gleneagles Maritime Medical Center that respondent has acute psychosis confirmed the observation of the Rio Grande's Master that respondent was confused when he showed up at the crewmess on November 1, 2000. Respondent's claim for disability benefits thus finds support from established facts. The Labor Arbiter was therefore correct that respondent suffered a psychotic disorder during the term of his employment contract.

We also note that respondent was not ill when he was hired by petitioners, as he passed the pre-employment medical examination. The CA also noted the Labor Arbiter's finding that respondent passed another medical and mental examination in Germany which proved that he was fit for sea duty.[18]

We disagree with petitioners that respondent is not entitled to disability benefits because he is guilty of fraud in concealing his pre-existing medical condition. Petitioners cannot rely on Section 20(E)[19] of the 2000 POEA-SEC since, as discussed above, it is the 1996 POEA-SEC that is applicable to the instant case. Section 20(E) of the 1996 POEA-SEC provides:

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[17] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 686.

[18] *Rollo*, p. 96.

[19] A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

E. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or records at no cost to the seafarer.

The above-quoted provision does not mention unconcealment. It only requires that the seafarer be furnished a copy of all pertinent medical records upon request. On this point, the NLRC appears to have been misled in ruling that respondent is guilty of concealment.

The evidence on record likewise belies petitioners' claim that respondent was eventually declared fit to work by their designated doctors. Notably, Dr. Reyes and Dr. Abesamis both found respondent to be suffering from recurrent acute psychotic disorder. Dr. Reyes said that respondent's psychotic disorder will become manifest once triggered by an outside factor, while Dr. Abesamis said that recurrence of the same psychotic disorder is possible. Dr. Abesamis even signed a medical certificate, SSS Form MMD-102, supporting respondent's claim for disability benefits before the SSS. In said medical certificate, Dr. Abesamis indicated her final diagnosis: respondent has acute psychotic disorder, recurrent. Hence, petitioners cannot claim that their designated doctors declared respondent as fit to work after his repatriation and treatment.

Without a declaration that respondent is already fit to work or an assessment of the degree of respondent's disability by petitioners' own doctors, respondent's disability is therefore permanent and total. This is equivalent to a Grade 1 impediment/ disability entitling respondent to US$60,000 as permanent and total disability benefits under the 1996 POEA-SEC.

We are unable to agree with the CA that respondent's psychotic disorder is an injury as a result of an accident from any cause whatsoever which would entitle respondent to disability benefits amounting to US$125,000 under the CBA. To stress, to be entitled to the compensation under Section 21(a) of the CBA, a seafarer must suffer an injury as a result of an accident. But there is no proof that respondent met an accident and was injured, that he met an unintended and unforeseen injurious occurrence

while on board the Rio Grande. Accident is an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen.[20]

We likewise disagree with the CA that respondent was working under abusive German superiors. This finding is based on respondent's allegation that his German superiors cruelly maltreated him. We note, however, that this is a bare allegation which deserves careful scrutiny. And we are unable to accept respondent's allegation as a fact for he could not even name the German chief engineer and the German officers who he said maltreated him. Respondent did not even mention the dates of the alleged maltreatment.[21]

Neither did we find any justification in the Labor Arbiter's Decision[22] why respondent is entitled to the higher amount of US$125,000. Said award was only stated in the dispositive portion[23] of the Labor Arbiter's Decision. How the Labor Arbiter awarded US$125,000 as disability benefits to respondent was not at all discussed. Needless to stress, the NLRC Rules of Procedure, past and present, require what must be contained in a Labor Arbiter's Decision: facts of the case; issue/s involved; applicable law or rules; conclusions and the reasons therefor; and specific remedy or relief granted. It behooves the Labor Arbiter to comply with the NLRC's own Rules of Procedure.

On the issue of attorney's fees, we have held that where an employee is forced to litigate and incur expenses to protect his

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[20] *Carlo F. Sunga v. Virjen Shipping Corp., et al*, G.R. No. 198640, April 23, 2014, p. 6, citing *Black's Law Dictionary*, 8th edition, © 2004 and F.B. Moreno, *Philippine Law Dictionary*, 3rd edition, © 1988.

[21] Records (Vol. I), pp. 52-53.

[22] *Id*. at 210-221. See in particular the ruling on pp. 219-220.

[23] *Id*. at 221.

right and interest, as in this case, he is entitled to an award of attorney's fees equivalent to 10% of the award.[24] Thus, respondent is also entitled to US$6,000 as attorney's fees.

Petitioners' claim of good faith is also unconvincing. Petitioners repeatedly deal with seafarers and enter into employment contracts with them. They are therefore aware of the contract they entered into with respondent and have a record of this one-page contract where they agreed to comply with the 1996 POEA-SEC. For them to cite the provision on concealment of the 2000 POEA-SEC in rejecting respondent's claim for disability benefits thus negates good faith on their part.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 8, 2010 and Resolution dated December 22, 2010 of the Court of Appeals in CA-G.R. SP. No. 94745 are **AFFIRMED** with the **MODIFICATION** that petitioners C.F. Sharp Crew Management, Inc. and Reederei Claus Peter Offen are jointly and severally to pay respondent Clemente M. Perez's permanent disability benefits in the amount of US$60,000 at the prevailing rate of exchange at the time of payment, plus 6% interest reckoned from the time of its finality until fully paid. In addition, they shall also pay attorney's fees amounting to 10% of the total award.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Reyes,* and *Jardeleza, JJ.,* concur.

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[24] *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, G.R. No. 193047, March 3, 2014, p. 13.

* Designated additional member per Special Order No. 1912 dated January 12, 2015.

THIRD DIVISION

[G.R. No. 210760. January 26, 2015]

KYLE ANTHONY ZABALA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION; APPLICATION OF THE CIRCUMSTANTIAL EVIDENCE RULE.—** It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. x x x. The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances: Sec. 4. *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if: (1) There is more than one circumstance; (2) The facts from which the inferences are derived are proven; (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. Moreover, in *Lozano v. People*, this Court clarified the application of the circumstantial evidence rule: To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a **fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime**. Unfortunately, in the case at bar, this Court finds that the prosecution failed to present sufficient circumstantial evidence to convict the petitioner of the offense charged. We find that the pieces of evidence presented before the trial court fail to provide a sufficient combination of circumstances, as to produce a conviction beyond reasonable doubt.

2. **CRIMINAL LAW; THEFT; ELEMENTS; *CORPUS DELICTI* OF THEFT, ELEMENTS; NOT ESTABLISHED.—** [T]he evidence presented by the prosecution fails to establish the *corpus delicti* of theft. In *Tan v. People*, this Court said: *Corpus delicti* means the "body or substance of the crime, and, in its primary sense, refers to the fact that the crime has been actually committed." The "essential elements of theft are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against persons or force upon things." In theft, *corpus delicti* has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking.

3. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; THE EVIDENCE MUST EXCLUDE THE POSSIBILITY THAT SOME OTHER PERSON COMMITTED THE CRIME.—** [T]he rule in circumstantial evidence cases is that the evidence must exclude the possibility that some other person committed the crime. In the case here, however, the prosecution failed to prove, or even allege, that it was impossible for some other person to have committed the crime of theft against Alas. The prosecution failed to adduce evidence that at the time the theft was committed, there was no other person inside the house of Alas, or that no other person could have taken the money from the closet of Alas. Alas himself admitted that there were other residents in the house, but these persons were never presented to prove their whereabouts at the time the incident took place. This failure of the prosecution leads the Court to no other conclusion but that they failed to establish that culpability could only belong to Zabala, and not to some other person.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

DECISION

VELASCO, JR., *J.*:

The Case

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the July 15, 2013 Decision of the Court of Appeals (CA) and its January 8, 2014 Resolution in CA-G.R. CR No. 34428, entitled *People of the Philippines v. Kyle Anthony Zabala*. The assailed CA Decision affirmed the July 7, 2011 Judgment in Crim. Case No. 1676-M-2008 of the Regional Trial Court (RTC), Branch 22, Malolos City, finding petitioner guilty beyond reasonable doubt of the crime of theft, punishable under Articles 308 and 309 of the Revised Penal Code. The assailed Resolution, meanwhile, denied petitioner's Motion for Reconsideration.

The Facts

An Information was filed against petitioner Kyle Anthony Zabala (Zabala) before the RTC, Branch 22, Malolos City, charging him with theft, the pertinent text of which states:

> That on or about the 18th day of June 2007 in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away with him, one envelope containing cash amounting to SIXTY EIGHT THOUSAND PESOS (PhP68,000.00) belonging to Randolph V. Alas, to the damage and prejudice of the said owner in the amount of PhP68,000.00.
>
> Contrary to law.[1]

When arraigned, petitioner pleaded "not guilty." Trial on the merits ensued. During the trial, the prosecution presented the

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[1] *Rollo*, p. 28.

testimonies of the complaining witness, Randolph Alas (Alas), and petitioner's alleged former girlfriend, Marlyn Piñon (Piñon). On the other hand, the defense presented the testimonies of petitioner and of one Muriel John Ganas (Ganas), his alleged companion on the day that the incident took place.[2]

Version of the Prosecution

The evidence for the prosecution tends to establish that Zabala is a jeepney driver who earns Two Hundred Pesos (₱200) to Four Hundred Pesos (₱400) per day on an alternate day basis. Complainant Alas, meanwhile, works at the Manila City Hall. It is through this job that he was able to save the Sixty-Eight Thousand Pesos (₱68,000) stolen by Zabala.[3] Piñon, on the other hand, had been the girlfriend of Zabala for about five months when the incident pertinent to this case occurred.

Alas testified that he and Zabala were neighbors in San Jose Del Monte City, Bulacan. As neighbors, he had treated Zabala as his *kumpare* and would often invite the latter to drinking sessions inside his house. At times, he would also call Zabala to repair his vehicle, because Zabala is also a mechanic. He would allow Zabala to follow him to his bedroom to get cash whenever spare parts are to be bought for the repair of his vehicle.[4]

Alas further testified that on June 18, 2007, at about 4:00 in the morning, he left his house to go to work. When he returned from work, at around 11:00 in the evening, he discovered that his money amounting to Sixty Eight Thousand Pesos (₱68,000), which he kept in an envelope inside his closet, was missing.[5] During that time, there were only five (5) persons living in their house: Alas, his parents, his nine (9) year-old son, and his aunt.

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[2] *Id*. at 76.

[3] *Id*. at 78.

[4] *Id*.

[5] *Id*. at 80.

He asked his parents and aunt if they knew where he kept his money, but they did not know.[6]

Witness Piñon, on the other hand, testified that in the early morning of June 18, 2007, she and Zabala, her boyfriend at the time, were together at a store owned by the latter, which was six to seven steps away from the complainant's house. She then saw Zabala climb the fence and scale the tree in front of the complainant's house, and enter the house. When he returned, she noticed that he had a bulge in his pocket, which she later found to be a plentiful sum of money. Zabala then brought her home, and agreed to meet her again at about 10:00 in the morning. They then went to Greenhills, where Zabala bought two Nokia mobile phones, which cost about Eight Thousand Five Hundred Pesos (₱8,500).[7]

Version of the Defense

For his defense, Zabala testified that in the early morning of June 17, 2007, he was driving his passenger jeepney, together with his friend, witness Ganas. They parted ways at around 6:00 in the morning of the following day. During the whole time they were together, they did not drop by the house of the private complainant. Neither did he have the time to meet Marilyn Piñon, of whom he regarded only as an acquaintance and not his girlfriend.[8]

Witness Ganas corroborated the declaration of Zabala. He testified that he was with petitioner, acting as the conductor, while petitioner was plying the route of his driven jeepney. He had known petitioner since his childhood, and was his good friend.[9]

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[6] *Id*. at 12.

[7] *Id*. at 79.

[8] *Id*. at 55.

[9] *Id*. at 31.

Ruling of the RTC

On July 7, 2011, the RTC rendered its Judgment convicting petitioner of the offense charged. The dispositive portion of the RTC Decision reads:

> WHEREFORE, finding guilt of the accused beyond reasonable doubt, judgment is hereby rendered in Criminal Case No. 1676-M-2008 CONVICTING accused KYLE ANTHONY ZABALA with the crime of theft defined and penalized under the provisions of Article 308 and 309 of the Revised Penal Code and is hereby [sentenced] to suffer imprisonment of, applying the Indeterminate Sentence Law, the MINIMUM penalty of *prision correccional* which is 6 years, to a MAXIMUM penalty of *prision mayor* in its maximum period [of] 8 years.
>
> Accused Zabala is likewise ordered to indemnify and pay the amount of sixty eight thousand pesos (Php68,000.00) to complaining witness Randolph V. Alas by way of reparation of the damage caused on him.
>
> Furnish both the public prosecutor and defense counsel of this judgment including the accused.[10]

Aggrieved by the Judgment, petitioner appealed to the CA, attributing to the lower court the following errors: (1) there was a grave error in not giving credence to petitioner's version; (2) petitioner was convicted of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt; and (3) petitioner cannot be convicted based on circumstantial evidence.

Ruling of the CA

In its presently assailed Decision promulgated on July 15, 2013, the CA denied the appeal and affirmed the decision of the trial court, but with modification as to the penalty to be imposed upon petitioner. The CA ruled that the prosecution was able to prove beyond reasonable doubt the guilt of the appellant through circumstantial evidence.

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[10] *Id*. at 70-71. Penned by Pairing Judge Albert R. Fonacier.

Citing *People v. Modesto*,[11] the CA said:

> x x x [T]he doctrine on circumstantial evidence has been recognized as part of the legal tradition when it was declared that "a rule of ancient respectability so molded into tradition is that circumstantial evidence suffices to convict only if the following requisites concur: first, there is more than one circumstance; second, the facts from which the inferences are derived are proven; and finally, the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[12]

The CA then found that the series of circumstances present in this case supports a conviction, and constitutes the basis for a reasonable inference of the existence of the facts thereby sought to be proved.[13]

Rejecting the defense of petitioner, the CA ruled that he offered no evidence other than an alibi to exculpate him from the crime charged. It then cited the rule that alibi is a weak defense, and cannot prevail over the positive testimony of a truthful witness.[14]

The CA disposed of petitioner's appeal as follows:

> WHEREFORE, premises considered, the appeal is DENIED. The assailed decision is AFFIRMED with MODIFICATION. As modified, accused-appellant is sentenced to six (6) years of prision correccional as minimum to twelve (12) years, eight (8) months and eight (8) days of reclusion temporal as maximum.
>
> Accused Zabala is likewise [ordered to] indemnify and pay the amount of Sixty Eight Thousand Pesos (Php68,000.00) to complaining witness Randolph V. Alas by way of reparation of the damage caused on him.[15]

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[11] No. L-25484, September 21, 1968, 25 SCRA 36.

[12] *Rollo*, p. 35.

[13] *Id*.

[14] *Id*. at 36.

[15] *Id*. at 40-41. Penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ricardo R. Rosario and Stephen C. Cruz.

Petitioner moved for reconsideration, but in its assailed Resolution dated January 8, 2014, the CA denied it.

Thus, the present recourse before this Court. Petitioner now argues that there is no sufficient evidence on record to support his conviction for the charge of theft.

In its Comment, respondent People insists that the prosecution was able to establish petitioner's guilt beyond a reasonable doubt. It argues that the CA correctly ruled that the series of circumstances presented before the trial court is sufficient to support a conviction.[16]

The Issues

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE PETITIONER'S CONVICTION BY GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' TESTIMONIES.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE EVIDENCE ON RECORD FAILED TO SUPPORT A CONVICTION.[17]

In fine, petitioner alleges that the evidence presented before the trial court is insufficient to convict him of the offense charged.

The Court's Ruling

We reverse the findings of the RTC and the CA. We agree with petitioner, and find that the evidence presented below does not constitute proof beyond a reasonable doubt, sufficient to convict petitioner of theft. Thus, he must be acquitted.

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[16] *Id.* at 112.

[17] *Id.* at 14.

Discussion

Given that the case for the prosecution is largely based on circumstantial evidence, a short discussion on the sufficiency of circumstantial evidence to convict an accused is in order.

Circumstantial evidence as basis for conviction

It is a settled rule that circumstantial evidence is sufficient to support a conviction, and that direct evidence is not always necessary. This is but a recognition of the reality that in certain instances, due to the inherent attempt to conceal a crime, it is not always possible to obtain direct evidence. In *Bacolod v. People*, this Court had the occasion to say:

> The lack or absence of direct evidence does not necessarily mean that the guilt of the accused cannot be proved by evidence other than direct evidence. Direct evidence is not the sole means of establishing guilt beyond reasonable doubt, because circumstantial evidence, if sufficient, can supplant the absence of direct evidence. The crime charged may also be proved by circumstantial evidence, sometimes referred to as indirect or presumptive evidence. Circumstantial evidence has been defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."[18]

The Rules of Court itself recognizes that circumstantial evidence is sufficient for conviction, under certain circumstances:

> Sec. 4. *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if:
>
> (1) There is more than one circumstance;
>
> (2) The facts from which the inferences are derived are proven;
>
> (3) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

Moreover, in *Lozano v. People*, this Court clarified the application of the circumstantial evidence rule:

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[18] G.R. No. 206236, July 15, 2013, 701 SCRA 229, 233.

To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a **fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime**.[19] (emphasis in the original)

The prosecution failed to establish, by circumstantial evidence, that petitioner is guilty of theft

Unfortunately, in the case at bar, this Court finds that the prosecution failed to present sufficient circumstantial evidence to convict the petitioner of the offense charged. We find that the pieces of evidence presented before the trial court fail to provide a sufficient combination of circumstances, as to produce a conviction beyond reasonable doubt.

To recall, the evidence of the prosecution purports to establish the following narrative: *first*, that the complaining witness Alas hides ₱68,000 in cash in his closet inside their house; *second*, that petitioner is aware that Alas hides money in his bedroom closet; *third*, that on the night of the incident, petitioner was with his then girlfriend, witness Piñon; *fourth*, that petitioner climbed through the fence of Alas's house, and was able to successfully gain entrance to his house; *fifth*, that petitioner later went out of the house with a bulge in his pockets; and *sixth*, that later that day, petitioner and Piñon went shopping for a cellphone.

The foregoing narration—based on the testimonies of the two witnesses of the prosecution, even if given full faith and credit and considered as established facts—fails to establish that petitioner committed the crime of theft. If at all, it may possibly constitute evidence that petitioner committed an offense, but not necessarily theft.

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[19] G.R. No. 165582, July 9, 2010, 624 SCRA 597, 608.

In the case before the Court, the evidence presented by the prosecution fails to establish the *corpus delicti* of theft. In *Tan v. People*, this Court said:

> Corpus delicti means the "body or substance of the crime, and, in its primary sense, refers to the fact that the crime has been actually committed." The "essential elements of theft are (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent of gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against persons or force upon things." In theft, corpus delicti has two elements, namely: (1) that the property was lost by the owner, and (2) that it was lost by felonious taking.[20]

First, nobody saw Zabala enter the bedroom of Alas, where the money amounting to ₱68,000 was allegedly kept and hidden. It is interesting to note that while Alas testified that there were other persons living in that house, i.e. his family members, the prosecution failed to put any of them on the witness stand, to testify that they saw or heard something out of the ordinary at the time the incident allegedly took place, or to explain why nobody else was able to notice that the theft took place while Alas was absent. Witness Piñon, meanwhile, merely testified that she saw Zabala scale the fence of Alas' house and enter it. She did not actually see Zabala enter the room of Alas, where the money was hidden.

Second, the evidence presented below is insufficient to determine without a reasonable doubt that the ₱68,000 in cash was lost due to felonious taking, and, more importantly, that it was petitioner who committed the felonious taking. Even if believed in its entirety, the testimony of witness Piñon does not show that when petitioner left the house of Alas, he was carrying the ₱68,000 in cash which was supposedly lost. All that Piñon saw was the bulge in petitioner's pockets. Piñon's testimony can hardly be considered as evidence to prove that when petitioner

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[20] G.R. No. 134298, August 26, 1999, 313 SCRA 220, 231.

entered the house of Alas, he did so because of his intent to commit asportation.

Third, Piñon's testimony fails to establish that Alas' pocket indeed contained the stolen money, as she never actually saw what was inside the pocket of Zabala. While she testified that later that day, they went to buy a cellphone amounting to ₱8,500, she failed to testify whether the money that Zabala used in paying for the cellphone was retrieved from the very same bulging pocket which she saw earlier in the day, which would have led to the conclusion that Zabala's pocket contained money. Failing this, what is left is the fact that Piñon saw a bulge in Zabala's pocket, and there is no evidence whatsoever to prove that his pocket in fact was used to hide the money that he allegedly stole. The trial and appellate courts committed error in accepting as fact that Zabala's pocket contained money, when there is a dearth of evidence to support such allegation.

And *fourth*, the rule in circumstantial evidence cases is that the evidence must exclude the possibility that some other person committed the crime.[21] In the case here, however, the prosecution failed to prove, or even allege, that it was impossible for some other person to have committed the crime of theft against Alas. The prosecution failed to adduce evidence that at the time the theft was committed, there was no other person inside the house of Alas, or that no other person could have taken the money from the closet of Alas. Alas himself admitted that there were other residents in the house, but these persons were never presented to prove their whereabouts at the time the incident took place. This failure of the prosecution leads the Court to no other conclusion but that they failed to establish that culpability could only belong to Zabala, and not to some other person.

Given the foregoing discussion, We find that petitioner was wrongfully convicted of theft. In the absence of proof beyond a reasonable doubt, the presumption of innocence must be upheld, and thus, petitioner should be acquitted.

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[21] *People v. Anabe*, G.R. No. 179033, September 6, 2010, 630 SCRA 10.

WHEREFORE, this petition is **GRANTED**. Accordingly, the July 15, 2013 Decision of the Court of Appeals and its January 8, 2014 Resolution in CA-G.R. CR No. 34428 are hereby **REVERSED** and **SET ASIDE**. Petitioner Kyle Anthony Zabala is **ACQUITTED** of the offense of theft, on account of reasonable doubt. No costs.

SO ORDERED.

Peralta, Villarama, Jr., Reyes, and *Leonen,*[*] *JJ.,* concur.

EN BANC

[A.C. No. 8235. January 27, 2015]

JOSELITO F. TEJANO, *complainant, vs.* **ATTY. BENJAMIN F. BATERINA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER'S ACCEPTANCE TO TAKE UP A CASE IMPLIEDLY STIPULATES THAT HE WILL CARRY IT TO ITS TERMINATION, THAT IS UNTIL THE CASE BECOMES FINAL AND EXECUTORY, AND HIS DUTY TO HIS CLIENTS DOES NOT AUTOMATICALLY CEASE WITH HIS SUSPENSION FROM PRACTICING THE PROFESSION, FOR THE CLIENT SHOULD NEVER BE LEFT GROPING IN THE DARK AND INSTEAD MUST BE ADEQUATELY AND FULLY INFORMED ABOUT THE DEVELOPMENTS IN HIS CASE.— Lawyers have a "fourfold duty to society, the legal profession, the courts and their clients," and must act "in accordance with the values and norms of the legal profession

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[*] Additional member per raffle dated September 10, 2014.

as embodied in the Code of Professional Responsibility." When a lawyer agrees to take up a client's cause, he makes a commitment to exercise due diligence in protecting the latter's rights. Once a lawyer's services are engaged, "he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him." A lawyer's acceptance to take up a case "impliedly stipulates [that he will] carry it to its termination, that is, until the case becomes final and executory. "Atty. Baterina's duty to his clients did not automatically cease with his suspension. At the very least, such suspension gave him a concomitant responsibility to inform his clients that he would be unable to attend to their case and advise them to retain another counsel.A lawyer - even one suspended from practicing the profession – owes it to his client to not "sit idly by and leave the rights of his client in a state of uncertainty." The client "should never be left groping in the dark" and instead must be "adequately and fully informed about the developments in his case."

2. **ID.; ID.; THE LAWYER'S FAILURE TO FILE THE REQUIRED PLEADINGS ON HIS CLIENT'S BEHALF CONSTITUTES GROSS NEGLIGENCE; PROPER PENALTY.—** Atty. Baterina practically abandoned this duty when he allowed the proceedings to run its course without any effort to safeguard his clients' welfare in the meantime. His failure to file the required pleadings on his clients' behalf constitutes gross negligence in violation of the Code of Professional Responsibility and renders him subject to disciplinary action. The penalties for a lawyer's failure to file the required brief or pleading range from warning, reprimand, fine, suspension, or in grave cases, disbarment.

3. **ID.; ID.; LAWYERS ARE PARTICULARLY CALLED UPON TO OBEY COURT ORDERS AND PROCESSES, AND ARE EXPECTED TO STAND FOREMOST IN COMPLYING WITH COURT DIRECTIVES BEING THEMSELVES OFFICERS OF THE COURT, AS THE RESOLUTION OF THE COURT IS NOT A MERE REQUEST BUT AN ORDER WHICH SHOULD BE COMPLIED WITH PROMPTLY AND**

COMPLETELY.— [A]tty. Baterina's reckless disregard for orders and directives of the courts is unbecoming of a member of the Bar. His conduct has shown that he has little respect for rules, court processes, and even for the Court's disciplinary authority. Not only did he fail to follow the trial court's orders in his clients' case, he even disregarded court orders in his own disciplinary proceedings. Considering Atty. Baterina's medical condition at that time, a simple explanation to the Court would have sufficed. Instead, however, he simply let the orders go unheeded, neglecting his duty to the Court. Lawyers, as this Court has previously emphasized, "are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court." As such, Atty. Baterina should "know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely."

4. **ID.; ID.; RESPONDENT'S PATTERN OF NEGLECTING HIS DUTY TO HIS CLIENTS AND PROPENSITY FOR DISRESPECTING THE AUTHORITY OF THE COURTS WARRANT AN IMPOSITION OF A LONGER SUSPENSION PERIOD OF FIVE (5) YEARS FOR GROSS NEGLIGENCE.—** In *Spouses Soriano v. Reyes,* the Court held that "the appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts." The Court notes that in 2001, Atty. Baterina was also suspended for two years after being found guilty of gross misconduct. x x x. The Court likewise noted in that case Atty. Baterina's "repeated failure to comply with the resolutions of the Court requiring him to comment on the complaint [which] indicates a high degree of irresponsibility tantamount to willful disobedience to the lawful orders of the Supreme Court." These two disciplinary cases against Atty. Baterina show a pattern of neglecting his duty to his clients, as well as a propensity for disrespecting the authority of the courts. Such incorrigible behavior is unacceptable and will not be tolerated among the members of the Bar. For this reason, the Court deems it proper to impose on Atty. Baterina a longer suspension period of five (5) years.

D E C I S I O N

CARPIO,[*] *J.*:

The Case

Before the Court is a verified administrative complaint for disbarment against Atty. Benjamin F. Baterina.

The Facts

On 26 March 2009, Joselito F. Tejano filed an Affidavit-Complaint[1] before the Office of the Court Administrator (OCA) of the Supreme Court against Judge Dominador LL. Arquelada, Presiding Judge of the Regional Trial Court (RTC), Vigan City, Ilocos Sur, Branch 21, and Tejano's own counsel, Atty. Baterina.

Tejano accused Judge Arquelada of acting in conspiracy with Atty. Baterina for the former to take possession of his (Tejano) property, which was the subject matter of litigation in the judge's court.

The case stems from Civil Case No. 4046-V, a suit for recovery of possession and damages filed by Tejano, his mother and sisters against the Province of Ilocos Sur. The property involved in the suit is a strip of land located at the northern portion of Lot No. 5663 in Tamag, Vigan City. The lot was wholly owned by Tejano's family, but the Province of Ilocos Sur constructed an access road stretching from the provincial highway in the east to the provincial government's motor pool in the west without instituting the proper expropriation proceedings.[2]

The case was raffled off to Branch 21 of the Vigan City RTC in October 1988. Four judges would hear the case before Judge Arquelada became the branch's presiding judge in 2001.[3]

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[*] Acting Chief Justice per Special Order No. 1914-dated 27 January 2015.

[1] *Rollo*, pp. 2-10.

[2] *Id.* at 8.

[3] *Id.*

Prior to his appointment to the bench, however, Judge Arquelada was one of the trial prosecutors assigned to Branch 21, and in that capacity represented the Province of Ilocos Sur in Civil Case No. 4046-V.[4]

In his Affidavit-Complaint, Tejano accused Judge Arquelada of colluding with Atty. Baterina in the former's bid to "take possession" of their property and was "collecting rentals from squatters who had set up their businesses inside the whole of Lot [No.] 5663." In support of his accusations, Tejano attached a copy of Transfer Certificate of Title No. T-43004[5] covering Lot No. 5663 in the name of Karen Laderas, purportedly the daughter of Judge Arquelada; receipts of rents paid to Terencio Florendo,[6] sheriff at Judge Arquelada's sala at the Vigan City RTC; receipts of rents paid to Aida Calibuso,[7] who was expressly designated by Laderas as her attorney-in-fact[8] in collecting said rents; and receipts of rents paid to Edgar Arquelada, Judge Arquelada's brother.[9]

As to his counsel, Tejano claims that Atty. Baterina "miserably failed to advance [his] cause." Specifically, Tejano alleged that Atty. Baterina (1) failed to object when the trial court pronounced that he and his co-plaintiffs had waived their right to present evidence after several postponements in the trial because his mother was ill and confined at the hospital;[10] (2) manifested in open court that he would file a motion for reconsideration of the order declaring their presentation of evidence terminated but failed to actually do so;[11] (3) not only failed to file said

[4] *Id*. at 4.

[5] *Id*. at 61.

[6] *Id*. at 62.

[7] *Id*. at 63-69.

[8] *Id*. at 70-71.

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

[10] *Id*. at 96.

[11] *Id*.

motion for reconsideration, but also declared in open court that they would not be presenting any witnesses without consulting his clients;[12] and (4) failed to comply with the trial court's order to submit their formal offer of exhibits.[13]

In a letter dated 27 March 2009, then Court Administrator (now Supreme Court Associate Justice) Jose P. Perez informed Tejano that the OCA has no jurisdiction over Atty. Baterina since it only has administrative supervision over officials and employees of the judiciary. However, Tejano was informed to file the complaint against his counsel at the Office of the Bar Confidant, and that the complaint against Judge Arquelada was already "being acted upon" by the OCA.[14]

In a Resolution dated 6 July 2009, the Court required Atty. Baterina to file a Comment on the complaint within 10 days from notice.[15] Failing to comply with the Court's order, Atty. Baterina was ordered to show cause why he should not be disciplinarily dealt with and once again ordered to comply with the Court's 6 July 2009 Order.[16]

In his Compliance dated 28 March 2010, Atty. Baterina explained that he had been recuperating from a kidney transplant when he received a copy of the complaint. He begged the Court's indulgence and said that his failure to comply was "not at all intended to show disrespect to the orders of the Honorable Tribunal."[17]

Atty. Baterina also denied the allegation of bad faith and negligence in handling the Tejano case. He explained that the reason he could not attend to the case was that in 2002, after

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[12] *Id*. at 96-97, 120.

[13] *Id*. at 97.

[14] *Id*. at 1; Per Complainant's Position Paper filed before the IBP Commission on Bar Discipline, Judge Arquelada has retired from the judiciary. *Id*. at 96.

[15] *Id*. at 77.

[16] *Id*. at 79.

[17] *Id*. at 81.

the initial presentation of the plaintiffs' case, he was suspended by the Court from the practice of law for two years.[18] He alleged that this fact was made known to Tejano's mother and sister. However, the trial court did not order plaintiffs to secure the services of another lawyer. On the contrary, it proceeded to hear the case, and plaintiffs were not represented by a lawyer until the termination of the case.[19] Atty. Baterina instead points to the "displayed bias" and "undue and conflict of interest"[20] of Judge Arquelada as the culprit in Tejano's predicament.

The Court, in its 19 July 2010 Resolution, found Atty. Baterina's explanation "not satisfactory" and admonished him "to be more heedful of the Court's directives in order to avoid delay in the disposition of [the] case." The Court also referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Investigation, Report and Recommendation

After the proceedings, the IBP's Commission on Bar Discipline promulgated its Report and Recommendation,[21] part of which reads:

> First, it appears that respondent's failure to appear in representation of his clients in the said civil case before the RTC was due to his two-year suspension from the practice of law in 2001. While this is a justified reason for his non-appearance, respondent, however, manifestly failed to properly inform the RTC of this fact. That way, the RTC would have, in the meantime, ordered plaintiffs to seek the services of another lawyer. Respondent's contention that the fact of his suspension was nonetheless circularized to all courts of the Philippines including the RTC is unavailing. Still, respondent should have exerted prudence in properly informing the RTC of his suspension in order to protect the interests of his clients.

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[18] See *Sipin-Nabor v. Baterina*, 412 Phil. 419 (2001).

[19] *Rollo*, p. 81.

[20] *Id*. at 82.

[21] *Id*. at 154-157.

Moreover, while he relayed such fact of suspension to his clients, there is no showing that he explained the consequences to them, or that he advised them to seek another counsel's assistance in the meantime. Clearly therefore, respondent's inaction falls short of the diligence required of him as a lawyer.

Second, it must be recalled that the RTC in the said case required the plaintiffs therein to submit their formal offer of evidence. However, respondent did not bother to do so, in total disregard of the RTC's Order dated 8 November 2004. Respondent's bare excuse that he remembers making an oral offer thereof deserves no merit because the records of this case clearly reveal the contrary. Because of the said inaction of respondent, his clients' case was dismissed by the RTC.

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From the foregoing, it is clear that respondent's acts constitute sufficient ground for disciplinary action against him. His gross negligence under the circumstances cannot be countenanced. It is, therefore, respectfully recommended that respondent be suspended from the practice of law for two (2) years, and be fined in the amount of Fifty Thousand Pesos (₱50,000.00), considering that this is his second disciplinary action. x x x.[22]

On 20 March 2013, the IBP Board of Governors adopted the following resolution:

RESOLUTION NO. XX-2013-237
Adm. Case No. 8235
Joselito F. Tejano vs.
Atty. Benjamin F. Baterina

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent is guilty of gross negligence, Atty. Benjamin F. Baterina is hereby SUSPENDED from the practice of law for two (2) years. However,

[22] *Id.* at 156-157.

the Fine of Fifty Thousand Pesos imposed on respondent is hereby deleted.[23]

The Court's Ruling

The Court adopts the IBP's report and recommendation, with modification as to the penalty.

The Code of Professional Responsibility governing the conduct of lawyers states:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

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

RULE 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Lawyers have a "fourfold duty to society, the legal profession, the courts and their clients," and must act "in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility."[24]

When a lawyer agrees to take up a client's cause, he makes a commitment to exercise due diligence in protecting the latter's rights. Once a lawyer's services are engaged, "he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him."[25] A lawyer's acceptance to take up a case

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[23] *Id*. at 153.

[24] *Del Mundo v. Capistrano*, A.C. No. 6903, 16 April 2012, 669 SCRA 462, 469. Citations omitted.

[25] *Lad vda. de Dominguez v. Agleron*, A.C. No. 5359, 10 March 2014. Citations omitted.

"impliedly stipulates [that he will] carry it to its termination, that is, until the case becomes final and executory."[26]

Atty. Baterina's duty to his clients did not automatically cease with his suspension. At the very least, such suspension gave him a concomitant responsibility to inform his clients that he would be unable to attend to their case and advise them to retain another counsel.

A lawyer – even one suspended from practicing the profession – owes it to his client to not "sit idly by and leave the rights of his client in a state of uncertainty."[27] The client "should never be left groping in the dark" and instead must be "adequately and fully informed about the developments in his case."[28]

Atty. Baterina practically abandoned this duty when he allowed the proceedings to run its course without any effort to safeguard his clients' welfare in the meantime. His failure to file the required pleadings on his clients' behalf constitutes gross negligence in violation of the Code of Professional Responsibility[29] and renders him subject to disciplinary action.[30] The penalties for a lawyer's failure to file the required brief or pleading range from warning, reprimand, fine, suspension, or in grave cases, disbarment.[31]

Further, Atty. Baterina's reckless disregard for orders and directives of the courts is unbecoming of a member of the Bar. His conduct has shown that he has little respect for rules, court processes, and even for the Court's disciplinary authority. Not only did he fail to follow the trial court's orders in his clients'

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[26] *Villaflores v. Limos*, 563 Phil. 453, 460 (2007).

[27] *Dagala v. Queseda, Jr.*, A.C. No. 5044, 2 December 2013, 711 SCRA 206.

[28] *Uy v. Tansinsin*, 610 Phil. 709, 716 (2009), citing *Edquibal v. Ferrer, Jr.*, 491 Phil. 1 (2005).

[29] *Supra* note 26, at 463.

[30] *Spouses Soriano v. Reyes*, 523 Phil. 1, 16 (2006).

[31] See *Pangasinan Electric Cooperative I v. Atty. Montemayor*, 559 Phil. 438 (2007).

case, he even disregarded court orders in his own disciplinary proceedings.

Considering Atty. Baterina's medical condition at that time, a simple explanation to the Court would have sufficed. Instead, however, he simply let the orders go unheeded, neglecting his duty to the Court.

Lawyers, as this Court has previously emphasized, "are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court."[32] As such, Atty. Baterina should "know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely."[33]

Proper Penalty

In *Spouses Soriano v. Reyes*, the Court held that "the appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[34]

The Court notes that in 2001, Atty. Baterina was also suspended for two years after being found guilty of gross misconduct.[35] In that case, Araceli Sipin-Nabor filed a complaint against Atty. Baterina for failing to file her Answer with Counterclaim in a case for quieting of title and recovery of possession where she and her siblings were defendants. Because of such failure, Sipin-Nabor was declared by the trial court to be in default and unable to present her evidence, and which, in turn, resulted in a decision adverse to her.

Atty. Baterina was also found to have "convert[ed] the money of his client to his own personal use without her consent" and "deceiv[ed] the complainant into giving him the amount of

[32] *Sibulo v. Ilagan,* 486 Phil. 197, 203-204 (2004).

[33] *Cabauatan v. Venida*, A.C. No. 10043, 20 November 2013, 710 SCRA 328.

[34] *Supra* note 30, at 16.

[35] *Sipin-Nabor v. Baterina*, 412 Phil. 419 (2001).

₱2,000.00 purportedly to be used for filing an answer with counterclaim," which he never did.

The Court likewise noted in that case Atty. Baterina's "repeated failure to comply with the resolutions of the Court requiring him to comment on the complaint [which] indicates a high degree of irresponsibility tantamount to willful disobedience to the lawful orders of the Supreme Court."[36]

These two disciplinary cases against Atty. Baterina show a pattern of neglecting his duty to his clients, as well as a propensity for disrespecting the authority of the courts. Such incorrigible behavior is unacceptable and will not be tolerated among the members of the Bar.

For this reason, the Court deems it proper to impose on Atty. Baterina a longer suspension period of five (5) years.

WHEREFORE, Atty. Benjamin F. Baterina is found **GUILTY** of gross negligence. He is **SUSPENDED** from the practice of law for five (5) years. He is also **STERNLY WARNED** that a repetition of the same or a similar offense will be dealt with more severely.

This decision shall take effect immediately and copies thereof furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines.

The Office of the Court Administrator is directed to circulate copies of this decision to all courts.

SO ORDERED.

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

Sereno, C.J. on leave.

Brion, J., on official leave.

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[36] *Id.* at 424.

EN BANC

[A.M. No. P-14-3194. January 27, 2015]
(Formerly A.M. No. 14-1-01-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CONSTANTINO P. REDOÑA, former Clerk of Court II, Municipal Trial Court, Tanauan, Leyte,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; SHORTAGES IN THE AMOUNTS TO BE REMITTED AND THE YEARS OF DELAY IN THE ACTUAL REMITTANCES CONSTITUTE GROSS NEGLECT OF DUTY.—** Time and time again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty. The guilt of Redoña is undisputed. The records speak for themselves. x x x. For his failure to remit the collections on time, Redoña committed a gross violation of SC Circular No. 13-92 which commands that all fiduciary collections "*shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank.*" Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees, and are expected to correctly and effectively implement regulations. Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute gross neglect of duty for which Redoña should be administratively liable.

2. **ID.; ID.; ID.; ID.; FAILURE TO IMMEDIATELY DEPOSIT THE FIDUCIARY COLLECTIONS WITH AUTHORIZED GOVERNMENT DEPOSITORIES CONSTITUTES GROSS**

NEGLECT OF DUTY, AND FAILURE TO COMPLY WITH PERTINENT COURT CIRCULARS DESIGNED TO PROMOTE FULL ACCOUNTABILITY FOR PUBLIC FUNDS CONSTITUTES GRAVE MISCONDUCT; GOOD FAITH, FORGETFULNESS, LACK OF SECURED STORAGE AREA FOR COLLECTION, AND FULL PAYMENT OF THE COLLECTION SHORTAGES NOT A DEFENSE.— Safekeeping of public and trust funds is essential to an orderly administration of justice. No protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds. Thus, Redoña's claim of good faith, his forgetfulness and lack of secured storage area for the collections are lame excuses to evade punishment for his neglect of duty. Clerks of court are not supposed to keep funds for a period of time. They have the duty to immediately deposit their collections with authorized government depositories because they are not authorized to keep those funds in their custody and failure in this regard constitutes gross neglect of duty. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability. Moreover, failure to comply with pertinent Court circulars designed to promote full accountability for public funds constitutes grave misconduct.

3. **ID.; ID.; ID.; ID.; DUTIES.—** Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the clerks of courts' duty to faithfully perform their duties and responsibilities to the end that there was full compliance with function, that of being the custodian of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office

is the hub of adjudicative and administrative orders, processes and concerns. They are liable for any loss, shortage, destruction or impairment of such funds and property.

4. **ID.; ID.; ID.; ID.; ID.; DISHONESTY AND GRAVE MISCONDUCT ARE GRAVE OFFENSES PUNISHABLE BY DISMISSAL FROM THE SERVICE.—** By failing to properly remit the cash collections constituting public funds, Redoña violated the trust reposed in him as disbursement officer of the judiciary. His failure to explain satisfactorily the fund shortage, and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros* and *Re: Report on the Financial Audit conducted in the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar*, the Court held that the unreasonable delay in the remittance of fiduciary funds constitutes serious misconduct. Even the restitution of the whole amount cannot erase his administrative liability. Clearly, his failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds. The inculpatory acts committed by respondent are so grave as to call for the most severe administrative penalty. Dishonesty and grave misconduct, both being in the nature of a grave offense, carry the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for re-employment in the government service. This penalty is in accordance with Sections 52 and 58 of the Revised Uniform Rules on Administrative Cases in the Civil Service.

D E C I S I O N

***PER CURIAM*:**

This administrative matter stemmed from the financial audit on the Books of Accounts of the Municipal Trial Court, Tanauan, Leyte, conducted by the Audit Team of the Court Management Office (*Team*) due to the application for separation benefits under Section 11, paragraph (b) of Republic Act (*R.A.*) No. 8291 of Constantino P. Redoña.[1] The audit covered the accountability period of Constantino P. Redoña and Ranulfo R. Balano, former Clerk of Court II and Officer-in-Charge, respectively, of the same court, from October 1, 2004 to July 31, 2012 and August 1, 2012 to February 28, 2013.

As culled from the records, the audit report yielded the following results:

1. **The cash count on March 1, 2013 disclosed neither shortage nor overage for the undeposited collections, computed as follows;**[2]

Name of Fund	Date	OR No.	Amount
SAJJ	03/01/13	3886520	₱9.60
JDF	03/01/13	1788954	₱40.40
TOTAL			**₱50.00**

2. **For the inventory of Used and Unused Official Receipts:**

There are seventy-three (73) booklets and two hundred-thirty three (233) pieces of official receipts which remain unused as of March 1, 2013, to wit:

Name of Accountable Form	Quantity	Inclusive Serial Numbers
SC ORs	19 booklets	3886001-6500 3886551-7000

[1] Approved by the Court on August 22, 2012.

[2] *Id.* at 18.

PHILJA ORs	7 booklets	643601-3650
		643701-4000
UP LRF ORs	8 booklets	0725601-6000
DOJ ORs	10 booklets	4574001-4500
	10 booklets	4574501-5000
	10 booklets	4575001-5500
	9 booklets	4575501-5950
JDF	30 pieces	3886521-6550
SAJF	46 pieces	1788955-9000
STF	23 pieces	7972928-2950
FF	43 pieces	2206908-6950
MF	29 pieces	643573-3600
LRF	29 pieces	725572-5600
VCF	33 pieces	4573968-4000
Total	73 booklets & 233 pieces	

3. For the Fiduciary Fund (FF):

The audit of the court's Fiduciary Fund (FF) account showed an outstanding balance of Four Hundred Seven Thousand Eight Hundred Seventy-Four Pesos (₱407,874.00) and upon reconciliation of the said balance against the court's LBP Savings Account, it disclosed a shortage of Seventy-One thousand Nine Hundred Pesos (₱71,900.00), which was restituted by Redoña on March 21, 2013. The detailed computation was presented below:

Unwithdrawn Fiduciary Fund per audit,		₱ 258,384.00
beginning Balance as of Sept. 30, 2004:		1,041,710.00
Add: Collections (10/1/2004 to 2/28/2013)		₱1,300,094.00
Total		
Less: Withdrawals (same period)		820,320.00
Balance of Unwithdrawn FF as of 2/28/2013		₱ 479,774.00
Less: Bank Balance as of 2/28/2013	₱423,045.53	
Add/(Less) Adjustments:		
Unwithdrawn Net Interest as of 2/28/2013	(₱15,171.53)	
	407,874.00	

Balance of Accountability – shortage	**71,900.00**
Less: Restitution on March 21, 2013	**71,900.00**
Final Accountability as of February 28, 2013	**₱ 00.00**

The shortage totaling to ₱71,900.00 was due to unreported and unremitted collections, to wit:

Receipt Date	**Bondsman/Litigant**	**Case No.**	**OR No.**	**Amount**
06/26/08	Dominador Lim	6448	11922537	₱ 12,000.00
06/26/08	Dominador Lim	6448	11922538	₱ 12,000.00
06/26/08	Dominador Lim	6448	11922540	₱ 12,000.00
06/26/08	Dominador Lim	6448	11922541	₱ 12,000.00
11/09/09	Remy Tismo	6694	3503955	₱ 2,000.00
11/16/09	Bernard Mijares	6748	3503956	₱ 2,000.00
12/07/09	Chito Cesar	6911	3503957	₱ 12,000.00
12/07/09	Raymundo Abarca	6095	3503958	₱ 8,000.00
Total				₱ 72,000.00
Less: Adjustment for under-withdrawal of OR No. 7183422				(₱100.00)
Adjusted total shortage				**₱ 71,900.00**

Out of ₱60,000 cash bond posted by Dominador A. Lim in Criminal Case No. 6448 on June 26, 2008, only ₱12,000.00 was reported in the cashbook and monthly report. Redoña explained in his Letter dated March 13, 2013 that OR Nos. 11922537, 11922538, 11922540 and 11922541 totalling to ₱48,000.00 were cancelled because of errors in the initial entries, and no collections have been received for the cancelled official receipts. Redoña denied that he used the court funds, however, it appeared that he allowed the refund of cash bond for the same case on September 14, 2011 amounting to ₱60,000.00. Also as per Special Power of Attorney executed by Mr. Dominador A. Lim, Dennis V. Lim, Simeon Lim, Luz Omega and Rogelio A. Yu, the accused in Criminal Case Number 6448, they requested to withdraw the cash bail bond in the total amount of ₱60,000.00, thus, resulting to an over-withdrawal by ₱48,000.00 for this case.

The audit team surmised that Redoña to cover up the missing collections, cancelled the original, duplicate and triplicate copies

of OR Nos. 11922537, 11922538, 11922540 and 11922441, with a total amount of ₱48,000.00. However, the photocopies of the original official receipts appended in the case folder were not cancelled (Annexes "H-1", "H-2", "H-3" and "H-4").

For December 2009 monthly report, Redoña certified in the cashbook and monthly report that no collections were made (Annexes "I" & "J"). To conceal collections, Redoña cancelled official receipt nos. 3503957 and 3503958 amounting to ₱ 12,000.00 and ₱8,000.00, respectively. (Annexes "K" & "L"). As to the amount of ₱12,000.00 covered by Official Receipt No. 3503957 dated December 7, 2009 from payor Chito Cesar, he explained that due to pure inadvertence and honest lapse on his part, he said the amount was not deposited and it was kept in a safe place in their office only known to him. For OR No. 3503958 dated December 7, 2009 in the amount of ₱8,000.00, Redoña allegedly posted cash bail bond for his friend, the accused Raymundo Abarca, out of pity.

After examination of the case folders, the following irregularities were also discovered, to wit:

> 1. Unreported collection of cash bond for Case No. 03-02-6868 dated March 15, 2011 amounting to ₱6,000.00. Thus, Redoña cancelled Official Receipt No. 3503967 to conceal the above missing collections. This was replaced with OR no. 3503973 on May 11, 2011 with the same amount (Annexes "M" and "N"). In the cash bond affidavit of undertaking, the accused Mr. Ariel Pirante posted a cash bond in Criminal Case No. 03-02-6868 amounting to ₱6,000.00 under OR No. 3503967 on March 15, 2011 as evidenced by Annex "O", but the said OR No. 3503967 was marked as cancelled in the original, duplicate and triplicate copies.
>
> 2. Received ₱4,000.00 from Florentino Mendoza in Case No. 10-04-6940 on October 29, 2010 under OR No. 3503963, but such amount was unreported/unrecorded and undeposited. To conceal the missing collections, Mr. Redoña cancelled the above OR (Annex "P" and "Q"). This was replaced by OR No. 3503970 on May 10, 2011 with the same amount. In the cash bond affidavit of undertaking, the accused Mr. Florentino Mendoza posted a cash bond in Criminal Case No. 10-04-6940 amounting to ₱4,000.00 under OR No. 3503963 on October 29, 2011 as evidenced by Annex "R", but the said OR No.

3503963 was marked as cancelled in the original, duplicate and triplicate copies.

3. Received ₱4,000.00 from Jayson Cabia in Criminal Case No. 02-08-6961 on March 1, 2011 under OR no. 3503966, but such amount was unrecorded/unreported and undeposited. To cover up the missing collections, Redoña cancelled the above receipt (Annex "S"). This was replaced with OR No. 3503972 on May 11, 2011. In the cash bond affidavit of undertaking, the accused Mr. Jayson Cabia Cabudsan, Doroteo Ocenar and six (6) unidentified persons posted a cash bond in Criminal Case no. 02-08-6961 amounting to ₱4,000.00 under OR No. 3503966 on March 1, 2011 as evidenced by Annex "T", but the said OR No. 3503963 was marked as cancelled in the original, duplicate and triplicate copies.

4. Received ₱2,000.00 from Bernard Mijares in Case No. 04-10-6748 on November 16, 2009 under OR No. 3503956, but such amount was unreported/unrecorded and undeposited. To cover up the missing collections, Redoña cancelled the above official receipt in the booklet (Annex "U"). In the case on file, the OR No. has not been marked as cancelled ("Annex "V"). In the cash bond affidavit of undertaking in the case record, the accused Mr. Bernard Mijares posted a cash bond in Criminal Case No. 04-10-6748 amounting to ₱2,000.00 under OR No. 3503956 on November 16, 2009 as evidenced by Annex "W".

IV. For the Sheriff's Trust fund (STF):

Unwithdrawn STF per audit, beginning balance as of September 30, 2004		₱ 0.00
Add: Collections (6/16/2010 to 2/28/2013)		₱ 28,000.00
Total		₱ 28,000.00
Less: Withdrawals (same period)		₱ 11,722.00
Balance of Unwithdrawn STF as of 2/28/2013		₱ 16,278.00
Less: Bank Balance as of 2/28/2013	₱16,000.00	
Add/(Less) Adjustments:		
Petty cash fund	₱ 278.00	₱ 16,278.00
Final Accountability as of Feb. 28, 2013		**₱ 00.00**

V. For the JUDICIARY DEVELOPMENT FUND (JDF)

There was an over-remittance of ₱1,150.40 of Redoña, which was due to Special Allowance for the Judiciary Fund (SAJF)

collections totaling to ₱1,148.40 deposited to the account, as computed below:

Total Collections (Nov. 1, 2004 to February 28, 2013)	₱	481,794.69
Less: Total Deposits (same period)		482,945.09
Over-remittance	₱	(1,150.40)
Less: SAJF collections deposited to this account		(1,148.40)
Balance of Accountability – over remittance	**₱**	**(2.00)**

VI. For the SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF):

There was an over-remittance of ₱7.20, as computed below:

Total Collections (November 1, 2004 to February 28, 2013	₱	616,748.20
Less: Total Deposits (same period)		615,607.00
Balance of Accountability	₱	1,141.20
Less: SAJF collections deposited to the JDF account		1,148.40
Balance of Accountability – over-remittance	**₱**	**7.20**

VII. For the Mediation fund (MF):

Total Collections (Sept. 1, 2005 to February 28, 2013)	₱	99,000.00
Less:Total Deposits (same period)		99,000.00
Balance of Accountability	**₱**	**00.00**

In sum, the total accountabilities of Redoña, which was restituted on March 21, 2013, totalling to Seventy One Thousand Nine Hundred Pesos (₱71,900.00), was computed below:

TOTAL ACCOUNTABILITIES & PAYMENTS

Nature of Funds	Accountabilities	Restitution	Balance
Clerk of Court Fiduciary Fund	₱ 71,900.00	₱ 71,900.00	₱ 0.00
Sheriff's Trust Fund	₱ 0.00	₱ 0.00	₱ 0.00
Judiciary Development Fund	₱ 0.00	₱ 0.00	₱ 0.00

Special Allowance for the Judiciary Fund	₱ 0.00	₱ 0.00	₱ 0.00
Mediation Fund	₱ 0.00	₱ 0.00	₱ 0.00
Total	**₱ 71,900.00**	**₱ 71,900.00**	**₱ 0.00**

Likewise, Redoña failed to remit his collections on FF on time, as shown below:

SCHEDULE 1: For Fiduciary Fund

Date of Collections	**Date Deposited**	**OR No.**	**Amount**	**Period of Delay**
06/26/08	03/22/13	11922537	₱12,000.00	4 yrs. & 9 mos.
06/26/08	03/22/13	11922538	₱12,000.00	4 yrs. & 9 mos.
06/26/08	03/22/13	11922540	₱12,000.00	4 yrs. & 9 mos.
06/26/08	03/22/13	11922541	₱12,000.00	4 yrs. & 9 mos.
11/09/09	03/22/13	3503955	₱ 2,000.00	3 yrs. & 3 mos.
11/16/09	03/22/13	3503956	₱ 2,000.00	3 yrs. & 3 mos.
12/07/09	03/22/13	3503957	₱12,000.00	3 yrs. & 2 mos.
12/07/09	03/22/13	3503958	₱ 8,000.00	3 yrs. & 2 mos.
01/13/05	04/19/05	11922976	₱ 6,000.00	3 mos.
01/21/05	04/19/05	11922977	₱ 5,000.00	3 mos.
01/21/05	04/19/05	11922978	₱ 8,000.00	3 mos.
04/13/05	07/28/05	11922984	₱ 2,000.00	3 mos.
04/20/05	08/22/05	11922985	₱12,000.00	3 mos.
05/18/05	08/22/05	11922503	₱10,000.00	3 mos.
12/01/05	03/07/06	11922996	₱ 3,720.00	3 mos.
12/01/05	08/05/08	11922997	₱ 2,000.00	3 mos.
06/26/08	03/16/06	11922539	₱12,000.00	1 mo. & 9 days
Total			**₱132,720.00**	

Considering the number of irregularities discovered by the audit team, the team recommended that their audit report be docketed as a regular administrative matter against Redoña for gross misconduct, gross neglect of duty, dishonesty and delay in the deposit of court collections, and that Redoña's retirement benefits, except accrued leave credits, be forfeited. On March 3, 2014, the Court resolved to re-docket the Report dated November 5, 2013 as a regular administrative matter against Redoña.

RULING

Time and time again, this Court has stressed that those charged with the dispensation of justice - from the presiding judge to the lowliest clerk - are circumscribed with a heavy burden of responsibility. Their conduct at all times must not only be characterized by propriety and decorum but, above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[3]

The guilt of Redoña is undisputed. The records speak for themselves, *to wit*: (1) The unreported and unremitted collections with a total amount of ₱71,900.00 resulting to a shortage of ₱71,900.00;[4] (2) To cover up for the missing collections, Redoña cancelled several original receipts, including OR Nos. 11922537, 11922538, 11922540, 11922541, 3503967, 3503973. 3503963, 3503966 and 3503956 (Annexes "F", "M", "N", "O", "P', "Q", "S", "U"); (3) For the December 2009 monthly report, Redoña issued a certification of "no collection" of fiduciary fund (Annexes "I" and "J") and again cancelled official receipts nos. 3503957 and 3503958 (Annexes "K" and "L"), amounting to ₱12,000.00 and ₱8,000.00, respectively, to cover up for the missing collections; (4) For OR No. 3503958 dated December 7, 2009 in the amount of ₱8,0000.00, Redoña allegedly posted cash bailbond for his friend, the accused Raymundo Abarca, out of pity; and (5) in

[3] *In Re: Report of COA on the shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City*, 348 Phil. 1 (1998); *In Re: Delayed Remittance of Collections of Odtuha,* 445 Phil. 220, 224 (2003); *Office of the Court Administrator v. Galo,* 373 Phil. 483, 490 (1999); *Cosca v. Palaypayon*, September 30, 1994, 273 SCRA 249, 269.

[4] Redoña restituted the shortage of ₱71,900.00 on March 21, 2013.

several instances, Redoña incurred delay for a period of four (4) years and nine (9) months in the remittances of his collections on fiduciary fund.

For his failure to remit the collections on time, Redoña committed a gross violation of SC Circular No. 13-92 which commands that all fiduciary collections "*shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depositary bank.*" Settled is the role of clerks of courts as judicial officers entrusted with the delicate function with regard to collection of legal fees, and are expected to correctly and effectively implement regulations.[5] Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute gross neglect of duty for which Redoña should be administratively liable.

Safekeeping of public and trust funds is essential to an orderly administration of justice. No protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability of government funds.[6] Thus, Redoña's claim of good faith, his forgetfulness and lack of secured storage area for the collections are lame excuses to evade punishment for his neglect of duty.

Clerks of court are not supposed to keep funds for a period of time. They have the duty to immediately deposit their collections with authorized government depositories because they are not authorized to keep those funds in their custody and failure in this regard constitutes gross neglect of duty. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability. Moreover, failure to comply with pertinent Court circulars designed to promote full accountability for public funds constitutes grave misconduct.

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[5] *Gutierrez v. Quitalig*, 448 Phil. 469, 481 (2003), cited in *Dela Peña v. Sia*, 526 Phil. 8, 18 (2006).

[6] *Re: Financial Audit on the Accountabilities of Mr. Restituto A. Tabucon, Jr., Former Clerk of Court II of the MCTC, Ilog, Candoni, Negros Occidental*, 504 Phil. 512, 515 (2005).

Equally appalling is the tampering of the court records, such as the unwarranted cancellation of official receipts which were committed with conscious and deliberate efforts to conceal the missing collections thus evincing a malicious and immoral propensity.

Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof.[7] It is the clerks of courts' duty to faithfully perform their duties and responsibilities to the end that there was full compliance with function, that of being the custodian of the court's funds and revenues, records, properties and premises.[8] They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes and concerns. They are liable for any loss, shortage, destruction or impairment of such funds and property.

By failing to properly remit the cash collections constituting public funds, Redoña violated the trust reposed in him as disbursement officer of the judiciary. His failure to explain satisfactorily the fund shortage, and fully comply with the Court's directives leave us no choice but to hold her liable for gross neglect of duty and gross dishonesty. In *Lirios v. Oliveros*[9] and *Re: Report on the Financial Audit conducted in the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar*,[10] the Court held that the unreasonable

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[7] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan*, 465 Phil. 24, 34 (2004).

[8] *Office of the Court Administrator v. Fortaleza*, 385 SCRA 293, 303 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408 and *Office of the Court Administrator v. Galo*, 373 Phil. 483 (1999).

[9] 323 Phil. 318 (1996).

[10] A.M. No. P-06-2177, January 27, 2006, 493 SCRA 44.

delay in the remittance of fiduciary funds constitutes serious misconduct.[11] Even the restitution of the whole amount cannot erase his administrative liability. Clearly, his failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds.[12]

The inculpatory acts committed by respondent are so grave as to call for the most severe administrative penalty. Dishonesty and grave misconduct, both being in the nature of a grave offense, carry the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for re-employment in the government service. This penalty is in accordance with Sections 52 and 58 of the Revised Uniform Rules on Administrative Cases in the Civil Service.[13]

WHEREFORE, the Court finds respondent CONSTANTINO P. REDOÑA, former Clerk of Court II of the Municipal Trial Court, Tanauan, Leyte, GUILTY of GROSS MISCONDUCT, GROSS NEGLECT OF DUTY and DISHONESTY. Since he had already retired from the service, the penalty of forfeiture of retirement benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations, is instead imposed upon him.

SO ORDERED.

Carpio (Acting C.J.), Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

Brion, J., on official leave.

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[11] *OCA v. Caballero*, A.M. No. P-05-2064 (Formerly A.M. OCA I.P.I. No. 05-7-449-RTC, March 2, 2010, 614 SCRA 21, 38.

[12] *Id*. at 39.

[13] See *Atty. Alcantara-Aquino v. Dela Cruz*, A.M. No. P-13-3141 (Formerly OCA I.P.I. No. 08-2875-P), January 21, 2014, 714 SCRA 377, 345.

EN BANC

[G.R. No. 213525. January 27, 2015]

FORTUNE LIFE INSURANCE COMPANY, INC., *petitioner, vs.* **COMMISSION ON AUDIT (COA) PROPER; COA REGIONAL OFFICE NO. VI-WESTERN VISAYAS; AUDIT GROUP LGS-B, PROVINCE OF ANTIQUE; and PROVINCIAL GOVERNMENT OF ANTIQUE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PLEADINGS AND PRACTICE; FILING AND SERVICE OF PLEADINGS; PROOF OF SERVICE; WHERE SERVICE IS DONE THROUGH REGISTERED MAIL, EITHER OR BOTH THE AFFIDAVIT OF THE PERSON EFFECTING THE MAILING AND THE REGISTRY RECEIPT MUST BE APPENDED TO THE PAPER BEING SERVED; CUT PRINT-OUTS OF THE REGISTRY RECEIPT NUMBERS OF THE REGISTERED MATTERS IS NOT SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT OF PROOF OF SERVICE FOR THE RULE REQUIRES THAT THE REGISTRY RECEIPTS THEMSELVES BE APPENDED, NOT THEIR REPRODUCTIONS.—** [T]he petitioner obviously ignores that Section 13, Rule 13 of the *Rules of Court* concerns two types of proof of service, namely: the affidavit and the registry receipt x x x. Section 13 thus requires that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing *and* the registry receipt, both of which must be appended to the paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted. Here, the petition for *certiorari* only carried the affidavit of service executed by one Marcelino T. Pascua, Jr., who declared that he had served copies of the petition by registered mail "under Registry Receipt Nos. 70449, 70453, 70458, 70498 and 70524 attached to the appropriate spaces found on pages 64-65 of the petition." The petition only bore, however, the cut *print-outs* of what *appeared to be* the registry receipt numbers of

the registered matters, not the registry receipts themselves. The rule requires to be appended the registry receipts, not their reproductions. Hence, the cut print-outs did not substantially comply with the rule. This was the reason why the Court held in the resolution of August 19, 2014 that the petitioner did not comply with the requirement of proof of service.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 64 OF THE RULES OF COURT; DISTINGUISHED FROM PETITION FOR REVIEW.— There is no parity between the petition for review under Rule 42 and the petition for *certiorari* under Rule 64. As to the nature of the procedures, Rule 42 governs an appeal from the judgment or final order rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the Regional Trial Court committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order. In contrast, the petition for *certiorari* under Rule 64 is similar to the petition for *certiorari* under Rule 65, and assails a judgment or final order of the Commission on Elections (COMELEC), or the Commission on Audit (COA). The petition is not designed to correct only errors of jurisdiction, not errors of judgment. Questions of fact cannot be raised except to determine whether the COMELEC or the COA were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction. The reglementary periods under Rule 42 and Rule 64 are different. In the former, the aggrieved party is allowed 15 days to file the petition for review from receipt of the assailed decision or final order, or from receipt of the denial of a motion for new trial or reconsideration. In the latter, the petition is filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration, if allowed under the procedural rules of the Commission concerned, interrupts the period; hence, should the motion be denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five days in any event, reckoned from the notice of denial.

3. ID.; ID.; ID.; FRESH PERIOD RULE DOES NOT APPLY TO PETITION FOR *CERTIORARI* UNDER RULE 64.— The

petitioner filed its motion for reconsideration on January 14,2013, which was 31 days after receiving the assailed decision of the COA on December 14, 2012. Pursuant to Section 3 of Rule 64, it had only five days from receipt of the denial of its motion for reconsideration to file the petition. Considering that it received the notice of the denial on July 14, 2014, it had only until July 19, 2014 to file the petition. However, it filed the petition on August 13, 2014, which was 25 days too late. We ruled in *Pates v. Commission on Elections* that the belated filing of the petition for *certiorari* under Rule 64 on the belief that the *fresh period rule* should apply was fatal to the recourse. As such, the petitioner herein should suffer the same fate for having wrongly assumed that the *fresh period rule* under *Neypes* applied. Rules of procedure may be relaxed only to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure. Absent this reason for liberality, the petition cannot be allowed to prosper.

4. **ID.; ID.; ID; GRAVE ABUSE OF DISCRETION; EXPLAINED; NOT PRESENT.—** *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. A close look indicates that the petition for *certiorari* did not sufficiently disclose how the COA committed grave abuse of its discretion. For sure, the bases cited by the petitioner did not approximate grave abuse of discretion. To start with, the supposed delays taken by the COA in deciding the appeal were neither arbitrary nor whimsical on its part. Secondly, the mere terseness of the denial of the motion for reconsideration was not a factor in demonstrating an abuse of discretion. And, lastly, the fact that Senator Pimentel, even if he had been the main proponent of the *Local Government Code* in the Legislature, expressed an opinion on the issues different from the COA Commissioners' own did not matter, for it was the latter's adjudication that had any value and decisiveness on the issues by virtue of their being the Constitutionally officials entrusted with the authority for

that purpose. It is equally relevant to note that the COA denied the money claim of the petitioner for the further reason of lack of sufficient publication as required by the *Government Procurement Act*. In that light, the COA acted well within its authority in denying the petitioner's claim.

5. **LEGAL ETHICS; ATTORNEYS; HARSH AND DISRESPECTFUL LANGUAGE UTTERED AGAINST THE COURT AND ITS MEMBERS ACCUSING THEM OF IGNORANCE AND RECKLESSNESS IN THE PERFORMANCE OF THEIR FUNCTION OF ADJUDICATION CANNOT BE TOLERATED.—** The petitioner and its counsel x x x exhibited their plain inability to accept the ill consequences of their own shortcomings, and instead showed an unabashed propensity to readily lay blame on others like the Court and its Members. In doing so, they employed harsh and disrespectful language that accused the Court and its Members of ignorance and recklessness in the performance of their function of adjudication. We do not tolerate such harsh and disrespectful language being uttered against the Court and its Members. We consider the accusatory language particularly offensive because it was unfounded and undeserved. As this resolution earlier clarifies, the petition for *certiorari* did not contain a proper affidavit of service. We do not need to rehash the clarification. Had the petitioner and its counsel been humbler to accept their self-inflicted situation and more contrite, they would have desisted from their harshness and disrespect towards the Court and its Members. Although we are not beyond error, we assure the petitioner and its counsel that our resolutions and determinations are arrived at or reached with much care and caution, aware that the lives, properties and rights of the litigants are always at stake. If there be errors, they would be unintended, and would be the result of human oversight. But in this instance the Court and its Members committed no error. The petition bore only cut reproductions of the supposed registry receipts, which even a mere "perfunctory scrutiny" would not pass as the original registry receipts required by the *Rules of Court.*

APPEARANCES OF COUNSEL

Eduardo Seguera Fortaleza for petitioner.
The Solicitor General for respondents.

RESOLUTION

BERSAMIN, *J.*:

Petitioner Fortune Life Insurance Company, Inc. seeks the reconsideration[1] of the resolution promulgated on August 19, 2014,[2] whereby the Court dismissed its petition for *certiorari* under Rule 64 in relation to Rule 65 of the *Rules of Court* due to its non-compliance with the provisions of Rule 64, particularly for: (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.[3]

Antecedents

Respondent Provincial Government of Antique (LGU) and the petitioner executed a memorandum of agreement concerning the life insurance coverage of qualified *barangay* secretaries, treasurers and *tanod*, the former obligating ₱4,393,593.60 for the premium payment, and subsequently submitting the corresponding disbursement voucher to COA-Antique for pre-audit.[4] The latter office disallowed the payment for lack of legal basis under Republic Act No. 7160 (*Local Government Code*). Respondent LGU appealed but its appeal was denied.

Consequently, the petitioner filed its petition for money claim in the COA.[5] On November 15, 2012, the COA issued its decision denying the petition,[6] holding that under Section 447 and Section 458 of the *Local Government Code* only municipal or city governments are expressly vested with the power to secure group insurance coverage for *barangay* workers; and noting the LGU's

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[1] *Rollo*, pp. 229-242.

[2] *Id*. at 226.

[3] *Id*. at 226.

[4] *Id*. at 18.

[5] *Id*. at 13-22.

[6] *Id*. at 71-91.

failure to comply with the requirement of publication under Section 21 of Republic Act No. 9184 (*Government Procurement Reform Act*).

The petitioner received a copy of the COA decision on December 14, 2012,[7] and filed its motion for reconsideration on January 14, 2013.[8] However, the COA denied the motion,[9] the denial being received by the petitioner on July 14, 2014.[10]

Hence, the petitioner filed the petition for *certiorari* on August 12, 2014, but the petition for *certiorari* was dismissed as earlier stated through the resolution promulgated on August 19, 2014 for (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.

Issues

In its motion for reconsideration, the petitioner submits that it filed the petition for *certiorari* within the reglementary period following the *fresh period rule* enunciated in *Neypes v. Court of Appeals*;[11] and that the petition for *certiorari* included an affidavit of service in compliance with Section 3, Rule 13 of the *Rules of Court*. It admits having overlooked the submission of a verified declaration; and prays that the declaration attached to the motion for reconsideration be admitted by virtue of its substantial compliance with the Efficient Use of Paper Rule[12] by previously submitting a compact disc (CD) containing the petition for *certiorari* and its annexes. It disagrees with the Court, insisting that it showed and proved grave abuse of discretion on the part of the COA in issuing the assailed decision.

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[7] *Id*. at 92.

[8] *Id*. at 92-104.

[9] *Id*. at 70.

[10] *Id*. at 6.

[11] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[12] A.M. No. 11-9-4-SC, November 13, 2012.

Ruling

We deny the motion for reconsideration for being without merit.

I

Petitioner did not comply with the rule on proof of service

The petitioner claims that the affidavit of service attached to the petition for *certiorari* complied with the requirement on proof of service.

The claim is unwarranted. The petitioner obviously ignores that Section 13, Rule 13 of the *Rules of Court* concerns two types of proof of service, namely: the affidavit and the registry receipt, *viz*:

> Section 13. *Proof of Service*. – x x x. If service is made by registered mail, proof shall be made by such **affidavit and the registry receipt** issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Section 13 thus requires that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing *and* the registry receipt, both of which must be appended to the paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted.[13]

Here, the petition for *certiorari* only carried the affidavit of service executed by one Marcelino T. Pascua, Jr., who declared that he had served copies of the petition by registered mail "under Registry Receipt Nos. 70449, 70453, 70458, 70498 and 70524 attached to the appropriate spaces found on pages 64-65

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[13] *Cruz v. Court of Appeals*, G.R. No. 123340, August 29, 2002, 388 SCRA 72, 80-81.

of the petition."[14] The petition only bore, however, the cut *print-outs* of what *appeared to be* the registry receipt numbers of the registered matters, not the registry receipts themselves. The rule requires to be appended the registry receipts, not their reproductions. Hence, the cut print-outs did not substantially comply with the rule. This was the reason why the Court held in the resolution of August 19, 2014 that the petitioner did not comply with the requirement of proof of service.[15]

II

Fresh Period Rule* under *Neypes* did not apply to the petition for *certiorari* under Rule 64 of the *Rules of Court

The petitioner posits that the *fresh period rule* applies because its Rule 64 petition is akin to a petition for review brought under Rule 42 of the *Rules of Court*; hence, conformably with the *fresh period rule*, the period to file a Rule 64 petition should also be reckoned from the receipt of the order denying the motion for reconsideration or the motion for new trial.[16]

The petitioner's position cannot be sustained.

There is no parity between the petition for review under Rule 42 and the petition for *certiorari* under Rule 64.

As to the nature of the procedures, Rule 42 governs an appeal from the judgment or final order rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the Regional Trial Court committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.[17] In contrast, the petition for *certiorari* under

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[14] *Rollo,* p. 224.

[15] *Supra* note 1.

[16] *Rollo*, pp. 234-235.

[17] Section 6, Rule 42 of the *Rules of Court*.

Rule 64 is similar to the petition for *certiorari* under Rule 65, and assails a judgment or final order of the Commission on Elections (COMELEC), or the Commission on Audit (COA). The petition is not designed to correct only errors of jurisdiction, not errors of judgment.[18] Questions of fact cannot be raised except to determine whether the COMELEC or the COA were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction.

The reglementary periods under Rule 42 and Rule 64 are different. In the former, the aggrieved party is allowed 15 days to file the petition for review from receipt of the assailed decision or final order, or from receipt of the denial of a motion for new trial or reconsideration.[19] In the latter, the petition is filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration, if allowed under the procedural rules of the Commission concerned, interrupts the period; hence, should the motion be denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five days in any event, reckoned from the notice of denial.[20]

The petitioner filed its motion for reconsideration on January 14, 2013, which was 31 days after receiving the assailed decision of the COA on December 14, 2012.[21] Pursuant to Section 3 of Rule 64, it had only five days from receipt of the denial of its

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[18] *Reyna v. Commission on Audit*, G.R. No. 167219, February 8, 2011, 647 SCRA 210, 225.

[19] Section 1, Rule 42, *Rules of Court*.

[20] Section 3, Rule 64, *Rules of Court*, states:

Section 3. *Time to file petition*. – The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[21] *Rollo,* p. 7.

motion for reconsideration to file the petition. Considering that it received the notice of the denial on July 14, 2014, it had only until July 19, 2014 to file the petition. However, it filed the petition on August 13, 2014, which was 25 days too late.

We ruled in *Pates v. Commission on Elections*[22] that the belated filing of the petition for *certiorari* under Rule 64 on the belief that the *fresh period rule* should apply was fatal to the recourse. As such, the petitioner herein should suffer the same fate for having wrongly assumed that the *fresh period rule* under *Neypes*[23] applied. Rules of procedure may be relaxed only to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.[24] Absent this reason for liberality, the petition cannot be allowed to prosper.

III

Petition for *certiorari* further lacked merit

The petition for *certiorari* is also dismissible for its lack of merit.

The petitioner insists on having fully shown that the COA committed grave abuse of discretion, to wit: (1) the challenged decision was rendered by a divided COA proper; (2) the COA took almost a year before promulgating its decision, and more than a year in resolving the motion for reconsideration, in contravention of the express mandate of the Constitution; (3) the resolution denying the motion for reconsideration was made up of only two sentences; (4) the matter involved a novel issue that called for an interpretation of the pertinent provisions of the *Local Government Code*; and (5) in issuing the resolution, COA Commissioners Grace Pulido-Tan and Heidi L. Mendoza

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[22] *Pates v. Commission on Elections*, G.R. No. 184915, June 30, 2009, 591 SCRA 481, 488.

[23] *Supra,* note 11.

[24] *Canton v. City of Cebu*, G.R. No. 152898, February 12, 2007, 515 SCRA 441, 448.

made it appear that they knew the *Local Government Code* better than former Senator Aquilino Pimentel who offered an opinion on the matter.[25]

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[26]

A close look indicates that the petition for *certiorari* did not sufficiently disclose how the COA committed grave abuse of its discretion. For sure, the bases cited by the petitioner did not approximate grave abuse of discretion. To start with, the supposed delays taken by the COA in deciding the appeal were neither arbitrary nor whimsical on its part. Secondly, the mere terseness of the denial of the motion for reconsideration was not a factor in demonstrating an abuse of discretion. And, lastly, the fact that Senator Pimentel, even if he had been the main proponent of the *Local Government Code* in the Legislature, expressed an opinion on the issues different from the COA Commissioners' own did not matter, for it was the latter's adjudication that had any value and decisiveness on the issues by virtue of their being the Constitutionally officials entrusted with the authority for that purpose.

It is equally relevant to note that the COA denied the money claim of the petitioner for the further reason of lack of sufficient publication as required by the *Government Procurement Act*. In that light, the COA acted well within its authority in denying the petitioner's claim.

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[25] *Rollo*, pp. 239-242.

[26] *Delos Santos v. Court of Appeals,* G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

IV

Petitioner and its counsel exhibited harshness and disrespect towards the Court and its Members

The petitioner contends that the Court erred in appreciating the petitioner's non-compliance with the requirement of the proof of service, alleging that even "a perfunctory scrutiny" of the petition for *certiorari* and its annexes could have easily shown that it had attached an affidavit of service to the petition. It goes on to make the following statements, *viz*:

> 25. Apparently, the staff of the Justice-in-charge failed to verify the PETITION and its annexes up to its last page, thus, the erroneous finding that there was non-submission of the proof of service;
>
> 26. In turn, the same omission was hoisted upon the other members of this Honorable Court who took the observation from the office of the Justice-in-charge, to be the obtaining fact, when in truth and in fact, it is not;[27]

The petitioner and its counsel thereby exhibited their plain inability to accept the ill consequences of their own shortcomings, and instead showed an unabashed propensity to readily lay blame on others like the Court and its Members. In doing so, they employed harsh and disrespectful language that accused the Court and its Members of ignorance and recklessness in the performance of their function of adjudication.

We do not tolerate such harsh and disrespectful language being uttered against the Court and its Members. We consider the accusatory language particularly offensive because it was unfounded and undeserved. As this resolution earlier clarifies, the petition for *certiorari* did not contain a proper affidavit of service. We do not need to rehash the clarification. Had the petitioner and its counsel been humbler to accept their self-inflicted situation and more contrite, they would have desisted from their harshness and disrespect towards the Court and its

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[27] *Rollo*, p. 238.

Members. Although we are not beyond error, we assure the petitioner and its counsel that our resolutions and determinations are arrived at or reached with much care and caution, aware that the lives, properties and rights of the litigants are always at stake. If there be errors, they would be unintended, and would be the result of human oversight. But in this instance the Court and its Members committed no error. The petition bore only cut reproductions of the supposed registry receipts, which even a mere "perfunctory scrutiny" would not pass as the original registry receipts required by the *Rules of Court*.

Accordingly, the petitioner and its counsel, Atty. Eduardo S. Fortaleza, should fully explain in writing why they should not be punished for indirect contempt of court for their harsh and disrespectful language towards the Court and its Members; and, in his case, Atty. Fortaleza should further show cause why he should not be disbarred.

WHEREFORE, the Court **DENIES** the Motion for Reconsideration for its lack of merit; **ORDERS** the petitioner and its counsel, Atty. Eduardo S. Fortaleza, to show cause in writing within ten (10) days from notice why they should not be punished for indirect contempt of court; and **FURTHER DIRECTS** Atty. Fortaleza to show cause in the same period why he should not be disbarred.

SO ORDERED.

Carpio (Acting C.J.), Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

Brion, J., on official leave.

FIRST DIVISION

[A.M. No. P-14-3281. January 28, 2015]
(Formerly OCA IPI No. 12-3998)

FELISICIMO[*] R. SABIJON and ZENAIDA A. SABIJON, *complainants, vs.* **BENEDICT[**] M. DE JUAN, SHERIFF IV, REGIONAL TRIAL COURT OF KABACAN, NORTH COTABATO, BRANCH 22,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; EXPECTED TO KNOW THE RULES OF PROCEDURE PERTAINING TO THEIR FUNCTIONS AS OFFICERS OF THE COURT, RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION, AND SHOULD AT ALL TIMES SHOW A HIGH DEGREE OF PROFESSIONALISM IN THE PERFORMANCE OF THEIR DUTIES.—** Sheriffs, like respondent being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They should always hold inviolate and invigorate the tenet that a public office is a public trust. In this light, sheriffs are expected to know the rules of procedure pertaining to their functions as officers of the court, relative to the implementation of writs of execution, and should at all times show a high degree of professionalism in the performance of their duties. Any act deviating from the procedure laid down by the Rules of Court is misconduct that warrants disciplinary action, which may be deemed as Simple Neglect of Duty or even Grave Abuse of Authority.

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[*] Felicisimo in some parts of the record.

[**] Referred to as "Benedicto" in the title of the case.

2. **ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY AND GRAVE ABUSE OF AUTHORITY, DEFINED; DEVIATION FROM THE RULES OF PROCEDURE RELATIVE TO THE ENFORCEMENT OF THE MONEY JUDGMENTS AND THE IMPLEMENTATION OF WRITS OF EXECUTION CONSTITUTES GRAVE ABUSE OF AUTHORITY AND SIMPLE NEGLECT OF DUTY.—** Simple Neglect of Duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, Grave Abuse of Authority has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury; it is an act of cruelty, severity, or excessive use of authority. In this case, respondent, as a Sheriff, ought to know that pursuant to Section 9, Rule 39 of the Rules of Court, a judgment debtor, in case he has insufficient cash to pay all or part of the judgment debt, is given the option to choose which among his properties or a part thereof may be levied upon. Moreover, respondent should have known that under Section 14 of the same Rule, he is required to make a return on the writ of execution and make periodic reports on the execution proceedings until either the full satisfaction of the judgment or the expiration of the writ's effectivity, as well as to furnish the parties copies of such return and periodic reports. Contrary to the aforesaid provisions and as correctly pointed out by the OCA, there was no showing that complainants manifested that: (*a*) they were unable to settle their judgment debt through cash, certified bank check, or any other mode of payment acceptable to the judgment creditor, PO2 Aquino; and (*b*) they chose the subject truck to be levied upon for the payment of their judgment debt. Instead, respondent immediately levied upon the subject truck without regard to complainants' pleas not to do so, since they were using the subject truck for their livelihood. Indeed, respondents' brazen act not only deprived complainants of the option given to them by the Rules on Execution but also caused undue prejudice to them since they were using the subject truck for livelihood purposes. Worse, respondent himself admitted that he failed to make a return on the writ and to make periodic reports on the execution process, thus, putting into serious doubt that an

auction sale involving the subject truck was actually conducted. Irrefragably, the OCA correctly concluded that respondent's foregoing acts constitute Grave Abuse of Authority and Simple Neglect of Duty.

3. **ID.; ID.; ID.; ID.; PROPER PENALTY FOR SIMPLE NEGLECT OF DUTY AND GRAVE ABUSE OF DISCRETION.—** Anent the proper penalty to be meted to respondent, the Court deems it appropriate to modify the penalty recommended by the OCA. Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides that "[i]f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." Under the RRACCS, Grave Abuse of Authority (or Oppression) is punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense, while the Simple Neglect of Duty is only punishable by suspension for the period one (1) month and one (1) day to six(6) months for the first offense and dismissal for the second offense. Hence, the OCA correctly deemed the former to be the more serious offense, thus rendering the latter offense as a mere aggravating circumstance.

4. **ID.; ID.; ID.; ID.; THE PRESENCE OF THE MITIGATING CIRCUMSTANCES OF "FIRST OFFENSE" AND "LENGTH OF SERVICE" DOES NOT AUTOMATICALLY RESULT IN THE DOWNGRADING OF THE PENALTY TO BE IMPOSED ESPECIALLY WHERE AN AGGRAVATING CIRCUMSTANCE IS PRESENT.—** The OCA erred in downgrading respondent's penalty to a mere fine in the amount of ₱10,000.00 payable within thirty (30) days from receipt of the Court's Resolution, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely, in view of the fact that it was respondent's first administrative offense in his more than nineteen (19) years of service. While "First Offense" and "Length of Service" may indeed be considered as mitigating circumstances, the presence thereof does not automatically result in the downgrading of the penalty to be imposed upon respondent,

especially in view of the existence of an aggravating circumstance. Section 49, Rule 10 of the RRACCS on the imposition of the proper administrative penalties is instructive on this matter x x x. In this case, since there is one (1) aggravating circumstance (*i.e.* Simple Neglect of Duty) and two (2) mitigating circumstances (*i.e.* First Offense and Length of Service), only the minimum of the imposable penalty for Grave Abuse of Authority (or Oppression) should be meted against respondent. Under the foregoing circumstances, the Court deems it appropriate to impose upon respondent the penalty of suspension for a period of six (6) months and one (1) day, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.

5. **ID.; ID.; ID.; ID.; THE CONDUCT THEREOF MUST NOT ONLY BE CHARACTERIZED BY PROPRIETY AND DECORUM, BUT MUST ALSO BE IN ACCORDANCE WITH THE LAW AND COURT REGULATION FOR NO POSITION DEMANDS GREATER MORAL RIGHTEOUSNESS AND UPRIGHTNESS FROM ITS HOLDER THAN AN OFFICE IN THE JUDICIARY.—** It bears noting that a Sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. Doubtless, a sheriff 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. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. The conduct of court personnel, therefore, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior

outside the court. Any act or omission of any court employee diminishing or tending to diminish public trust and confidence in the courts will not be tolerated. The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Joint Affidavit-Complaint[1] dated November 23, 2012 filed by complainants Felisicimo R. Sabijon (Felisicimo) and Zenaida A. Sabijon (Zenaida; collectively, complainants) against respondent Benedict M. De Juan (respondent), Sheriff IV of the Regional Trial Court of Kabacan, North Cotabato, Branch 22 (RTC), charging him of Grave Misconduct and Malfeasance.

The Facts

In their Joint Affidavit-Complaint, complainants alleged that on May 19, 2007, Felisicimo and PO2 Recto Aquino (PO2 Aquino) figured in a vehicular accident whereby the former's Isuzu Elf Truck with Plate No. GJY-476 (subject truck), which complainants used for their livelihood, hit PO2 Aquino's van from behind. Due to their failure to settle, PO2 Aquino filed a civil case for damages and attorney's fees against Felisicimo and a certain Roger Saso, as driver/owners of the subject truck, entitled "*PO2 Recto Aquino v. Roger Saso and/or Felicisimo Sabijon*," docketed as Civil Case No. 345, before the 2nd Municipal Circuit Trial Court of Mlang-Matalam, Mlang, Cotabato (MCTC). Thereafter, or on December 8, 2011, respondent and PO2 Aquino went to complainants' residence and, on the strength of the Writ of Execution[2] dated June 14, 2011 (subject writ), allegedly forcibly took away the subject truck.[3]

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[1] *Rollo*, pp. 14-16.

[2] *Id*. at 20. Penned by Presiding Judge Arvin Sadiri B. Balagot, CPA.

[3] *Id*. at 15 and 74.

In this regard, complainants surmised that respondent committed irregularities in executing the judgment in Civil Case No. 345 and in the disposition of the subject truck, claiming that: (*a*) they were not furnished a Notice of Sheriff's Sale anent the subject truck; (*b*) assuming an auction sale indeed took place, respondent never gave them the excess of the proceeds, considering that the value of the subject truck was significantly higher than their judgment debt which was less than ₱80,000.00; (*c*) respondent and PO2 Aquino connived in not selling the subject truck at public auction and instead, appropriated the same for their personal benefit, causing damage and prejudice to complainants; and (*d*) Zenaida personally saw the subject truck being driven by a person other than PO2 Aquino.[4]

In his defense,[5] respondent vehemently denied the accusations against him and invoked good faith in the performance of his duties. He maintained that he was merely enforcing the subject writ. He explained that he initially went to complainants' residence on November 25, 2011, but was unable to talk to them since they were away. He went back on December 8, 2011 and levied on execution the subject truck.[6] On December 21, 2011, he issued a Notice of Sale on Execution of Personal Property[7] setting the public auction on December 29, 2011 at 2 o' clock in the afternoon at the Hall of Justice, RTC, but since nobody participated in the auction,[8] the vehicle was awarded to PO2 Aquino.[9] Respondent then asserted that he already submitted his Sheriff's Return on January 6, 2012, only that it could not be found in the records of the MCTC. Later on, he readily admitted his failure to submit the Sheriff's Return and attributed

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[4] *Id*. at 74.

[5] See letter dated January 16, 2013; *id*. at 37-38.

[6] *Id*. at 37.

[7] *Id*. at 43.

[8] As reflected in the Minutes of Auction Sale dated December 29, 2011 signed by Process Server Victor Silapan and certified by respondent. *Id*. at 44.

[9] *Id*. at 37-38, 46-47, and 75.

the same to the fact that he is the only Sheriff in the MCTC after his colleagues either retired or went on a leave of absence.[10]

Finally, respondent contested complainants' valuation of the subject truck, arguing that its value should only be more or less ₱80,000.00, taking into consideration the poor state of its engine as well as its rotten under chassis.[11]

The OCA's Report and Recommendation

In a Report and Recommendation[12] dated September 11, 2014, the Office of the Court Administrator (OCA) found respondent administratively liable for Grave Abuse of Authority and Simple Neglect of Duty, mitigated by the fact that it was his first offense in his more than 19 years of service, and accordingly, meted him the penalty of fine in the amount of ₱10,000.00 payable within thirty (30) days from receipt of the Court's Resolution, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.[13]

The OCA found that by his own admission, respondent digressed from the procedure laid down by the Rules of Court for the enforcement of judgments when he: (*a*) immediately levied upon the subject truck, rendering nugatory the option given to complainants, as judgment debtors, to choose which property or part thereof may be levied upon; (*b*) failed to keep the levied property securely in his custody; and (*c*) did not prepare a Sheriff's Return within the prescribed period and furnish the parties copies of the same.[14] In this light, the OCA doubted the existence of the auction sale, opining that without the foregoing,

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[10] To note, Sheriff's Return was only filed with the RTC on January 15, 2013 (see *id*. at 40.) See also *id*. at 75.

[11] *Id*. at 38 and 75.

[12] *Id*. at 74-81. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Thelma C. Bahia, and OCA Legal Office Chief Wilhelmina D. Geronga.

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

[14] See *id*. at 77-79.

all that respondent has to prove that an actual auction sale occurred is his bare allegation, which is at most self-serving, and thus, cannot be given any credence.[15]

Finally, the OCA did not give credence to respondent's assertion that the subject truck was only valued at more or less ₱80,000.00, considering that the same was mortgaged on November 28, 2011 in order to secure a loan amounting to ₱149,272.00.[16]

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for Grave Abuse of Authority (otherwise referred to as Oppression) and Simple Neglect of Duty.

The Court's Ruling

The Court concurs with the OCA's findings and recommendation, except as to the recommended penalty to be imposed upon respondent.

Sheriffs, like respondent being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They should always hold inviolate and invigorate the tenet that a public office is a public trust.[17] In this light, sheriffs are expected to know the rules of procedure pertaining to their functions as officers of the court, relative to the implementation of writs of execution, and should at all times show a high degree of

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[15] See *id*. at 79-80.

[16] *Id*. at 79.

[17] See *Viscal Development Corporation v. Dela Cruz-Buendia*, A.M. No. P-12-3097, November 26, 2012, 686 SCRA 299, 305, citing *Cruz v. Villar*, 427 Phil. 229, 234-235 (2002).

professionalism in the performance of their duties. Any act deviating from the procedure laid down by the Rules of Court is misconduct that warrants disciplinary action,[18] which may be deemed as Simple Neglect of Duty[19]or even Grave Abuse of Authority.[20]

Simple Neglect of Duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[21] On the other hand, Grave Abuse of Authority has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury; it is an act of cruelty, severity, or excessive use of authority.[22]

In this case, respondent, as a Sheriff, ought to know that pursuant to Section 9,[23] Rule 39 of the Rules of Court, a judgment

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[18] *Katague v. Ledesma*, A.M. No. P-12-3067, July 4, 2012, 675 SCRA 527, 535, citations omitted.

[19] See *Viscal Development Corporation v. Dela Cruz-Buendia*, *supra* note 17, at 310-311, citing *Atty. Bansil v. De Leon*, 529 Phil. 144, 148 (2006).

[20] See *Romero v. Villarosa, Jr.*, A.M. No. P-11-2913, April 12, 2011, 648 SCRA 32, 41-42.

[21] *Court of Appeals v. Manabat, Jr.*, A.M. No. CA-11-24-P, November 16, 2011, 660 SCRA 159, 165, citing *Reyes v. Pablico*, 538 Phil. 10, 20 (2006).

[22] *Romero v. Villarosa, Jr.*, *supra* note 20, citing *Rafael v. Sualog*, 577 Phil. 159, 169 (2008).

[23] Section 9, Rule 39 of the Rules of Court provides:

SEC. 9. *Execution of judgement for money, how enforced.—*

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment oblige or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount wihtin the same day to the clerk of court of the court that issued writ.

debtor, in case he has insufficient cash to pay all or part of the judgment debt, is given the option to choose which among his properties or a part thereof may be levied upon. Moreover, respondent should have known that under Section 14[24] of the same Rule, he is required to make a return on the writ of execution and make periodic reports on the execution proceedings until either the full satisfaction of the judgment or the expiration of the writ's effectivity, as well as to furnish the parties copies of such return and periodic reports.

Contrary to the aforesaid provisions and as correctly pointed out by the OCA, there was no showing that complainants manifested that: (*a*) they were unable to settle their judgment debt through cash, certified bank check, or any other mode of payment acceptable to the judgment creditor, PO2 Aquino; and (*b*) they chose the subject truck to be levied upon for the payment

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(b) *Satisfaction by levy*. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature what soever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

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[24] Section 14, Rule 39 of the Rules provides:

SEC. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

of their judgment debt. Instead, respondent immediately levied upon the subject truck without regard to complainants' pleas not to do so, since they were using the subject truck for their livelihood. Indeed, respondents' brazen act not only deprived complainants of the option given to them by the Rules on Execution but also caused undue prejudice to them since they were using the subject truck for livelihood purposes. Worse, respondent himself admitted that he failed to make a return on the writ and to make periodic reports on the execution process, thus, putting into serious doubt that an auction sale involving the subject truck was actually conducted. Irrefragably, the OCA correctly concluded that respondent's foregoing acts constitute Grave Abuse of Authority and Simple Neglect of Duty.

Anent the proper penalty to be meted to respondent, the Court deems it appropriate to modify the penalty recommended by the OCA. Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) provides that "[i]f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." Under the RRACCS, Grave Abuse of Authority (or Oppression) is punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense, while the Simple Neglect of Duty is only punishable by suspension for the period one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[25] Hence, the OCA correctly deemed the former to be the more serious offense, thus rendering the latter offense as a mere aggravating circumstance.

However, the OCA erred in downgrading respondent's penalty to a mere fine in the amount of 10,000.00 payable within thirty (30) days from receipt of the Court's Resolution, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely, in view of the fact that it was

[25] See Section 46 (B) (2) and (D) (1) of the RRACCS.

respondent's first administrative offense in his more than nineteen (19) years of service.[26] While "First Offense" and "Length of Service" may indeed be considered as mitigating circumstances,[27] the presence thereof does not automatically result in the downgrading of the penalty to be imposed upon respondent, especially in view of the existence of an aggravating circumstance. Section 49, Rule 10 of the RRACCS on the imposition of the proper administrative penalties is instructive on this matter, to wit:

> Section 49. *Manner of imposition.* – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:
>
> a. **The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present**;
>
> b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present;
>
> c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present;
>
> d. **Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present**; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances. (Emphases and underscoring supplied)

In this case, since there is one (1) aggravating circumstance (*i.e.* Simple Neglect of Duty) and two (2) mitigating circumstances (*i.e.* First Offense and Length of Service), only the minimum of the imposable penalty for Grave Abuse of Authority (or Oppression) should be meted against respondent. Under the foregoing circumstances, the Court deems it appropriate to impose

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[26] See *rollo*, p. 80.

[27] See Section 48 (l) and (n) of the RRACCS.

upon respondent the penalty of suspension for a period of six (6) months and one (1) day, with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.

It bears noting that a Sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. High standards of conduct are expected of sheriffs who play an important role in the administration of justice. They are tasked with the primary duty to execute final judgments and orders of the courts. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate.[28] Doubtless, a sheriff 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. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. The conduct of court personnel, therefore, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court. Any act or omission of any court employee diminishing or tending to diminish public trust and confidence in the courts will not be tolerated. The Court will not hesitate to impose the ultimate penalty on those who fall short of their accountabilities.[29]

WHEREFORE, respondent Benedict M. De Juan, Sheriff IV of the Regional Trial Court of Kabacan, North Cotabato, Branch 22 is found **GUILTY** of Grave Abuse of Authority (or

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[28] *Romero v. Villarosa, Jr.*, *supra* note 20, at 45, citations omitted.

[29] *Id.*

Oppression) and Simple Neglect of Duty, mitigated by the fact that it is his first offense in his more than nineteen (19) years of service. Accordingly, he is hereby **SUSPENDED** for a period of six (6) months and one (1) day effective from the finality of this Decision, with a **STERN WARNING** that a repetition of the same or similar infraction in the future shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168616. January 28, 2015]

HOME GUARANTY CORPORATION, *petitioner, vs.* **LA SAVOIE DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; FILING TWO CASES INVOKING THE SAME RIGHT AND PROCEEDING FROM THE SAME CAUSE OF ACTION CONSTITUTES FORUM SHOPPING.—** The divergence in specific reliefs sought notwithstanding, Home Guaranty Corporation's bases for these reliefs are the same. In Civil Case No. 05314, Home Guaranty Corporation asked that La Savoie cease collecting payments and that collected payments be remitted to it *because it supposedly now owns the real estate development projects of La Savoie that form part of the Asset Pool.* In the present Appeal, Home Guaranty

Corporation asks that the properties forming part of the Asset Pool be excluded from corporate rehabilitation proceedings *because it, and no longer La Savoie, is the owner of these properties.* Thus, in both cases, Home Guaranty Corporation is invoking the same right and is proceeding from the same cause of action, i.e., its supposed ownership. True, there is divergence in the details of the specific reliefs it is seeking, but Home Guaranty Corporation is seeking the same *basic* relief, i.e., the recognition of its alleged ownership. The exclusion of the properties from corporate rehabilitation proceedings and the remittance to it of payments are mere incidents of this basic relief. Accordingly, in simultaneously pursuing the present case and Civil Case No. 05314, Home Guaranty Corporation engaged in forum shopping. It is worth emphasizing that the present Petition or Appeal, being a mere offshoot of La Savoie's original Petition for Rehabilitation, is *not* the act constitutive of forum shopping. Forum shopping was committed not through the filing of this Appeal but through the filing of Civil Case No. 05314 before the Regional Trial Court.

2. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; EFFECT OF STAY ORDER ISSUED BY THE REGIONAL TRIAL COURT.— [T]he Regional Trial Court issued its June 4, 2003 Stay Order staying "the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against [La Savoie], its guarantors and sureties not solidarily liable with it." It also "prohibited [La Savoie] from making any payment of its liabilities outstanding as of the date of the filing of the petition on April 25, 2003." The issuance of June 4, 2003 Stay Order was in accordance with Rule 4, Section 6 of this court's November 21, 2000 Resolution in A.M. No. 00-8-10-SC, otherwise known as the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). Though subsequently replaced in 2013 by the Financial Rehabilitation Rules of Procedure, the Interim Rules was in effect at the time of the incidents relevant to this case and which then governed "petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to Presidential Decree No. 902-A, x x x. With the issuance of this Stay Order, the claims of La Savoie's creditors, including those of the holders of the LSDC certificates, were barred

from being enforced. From the point of view of La Savoie and "its guarantors and sureties not solidarily liable with it," no payment could have been made by them. Thus, *for as long as the Stay Order was in effect*, certificate holders were barred from insisting on and receiving payment, whether from the principal debtor, La Savoie, or from the guarantor, Home Guaranty Corporation. Conversely, La Savoie and Home Guaranty Corporation were barred from paying certificate holders *for as long as the Stay Order was in effect*.

3. ID.; ID.; ID.; ANY ORDER ISSUED BY THE TRIAL COURT IN REHABILITATION PROCEEDINGS IS IMMEDIATELY EXECUTORY; APPEAL CANNOT RESTRAIN THE EFFECTIVITY OF THE ORDER.— Rule 3, Section 5 is definite and unambiguous: Any order issued by the trial court in rehabilitation proceedings is immediately executory. Rule 3, Section 5 makes no distinction as to the kinds of orders (e.g., final or interlocutory and stay orders) that may be issued by a trial court. Nowhere from its text can it be gleaned that it does not cover orders such as those issued by the trial court on October 1, 2003. If at all, its second sentence, which explicitly makes reference to orders on appeal, affirms that it is equally applicable to final orders. *We entertain no doubt that Rule 3, Section 5 of the Interim Rules covered the trial court's October 1, 2003 Order dismissing the Petition for Rehabilitation and lifting the Stay Order. The same Order was thus immediately executory*. The filing of La Savoie's Appeal did not restrain the effectivity of the October 1, 2003 Order. It is true that generally, an appeal stays the judgment or final order appealed from. Rehabilitation proceedings, however, are not bound by procedural rules spelled out in the Rules of Court. The Interim Rules, not the Rules of Court, was the procedural law, which (at the time of the pivotal incidents in this case) governed rehabilitation proceedings. In Rule 3, Section 5, the Interim Rules explicitly carved an exception to the general principle that an appeal stays the judgment or final order appealed from. It explicitly requires the issuance by the appellate court of an order enjoining or restraining the order appealed from.

4. ID.; ID.; ID.; WHILE IT IS TRUE THAT THE INTENTION OF SUSPENDING THE ENFORCEMENT OF THE CLAIMS

AGAINST A CORPORATION IS "TO PREVENT A CREDITOR FROM OBTAINING AN ADVANTAGE," IT HOWEVER APPLIES ONLY TO CORPORATIONS UNDER RECEIVERSHIP.— It is true, as La Savoie asserts, that the suspension of the enforcement of claims against corporations *under receivership* is intended "to prevent a creditor from obtaining an advantage or preference over another." This is "intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora." x x x As is evident from these discussions, however, the intention of "prevent[ing] a creditor from obtaining an advantage" is applicable in the context of an *ongoing* receivership. The prevention of a creditor's obtaining an advantage is not an end in itself but further serves the purpose of "giv[ing] enough breathing space for the . . . rehabilitation receiver." Thus, it applies only to corporations *under* receivership. Plainly, it does not apply to corporations who have sought to put themselves under receivership but, for lack of judicial sanction, have not been put under or are *no longer* under receivership.

5. **CIVIL LAW; *PACTUM COMMISSORIUM*; TRANSFER OF PROPERTY WHICH MAKES OUT A CLEAR CASE OF *PACTUM COMMISSORIUM* IS VOID AND INEFFECTUAL.—** Viewed solely through the lens of the Trust Agreement and the Contract of Guaranty, the transfer made to Home Guaranty Corporation on the strength of the Deed of Conveyance appears valid and binding. However, we find that its execution is in violation of a fundamental principle in the law governing credit transactions. We find the execution of a Deed of Conveyance without resorting to foreclosure to be indicative of *pactum commissorium*. Hence, it is void and ineffectual and does not serve to vest ownership in Home Guaranty Corporation. x x x In *Garcia v. Villar*, this court discussed the elements of *pactum commissorium*: The following are the elements of *pactum commissorium*: (1) There should be a property mortgaged by way of security for the payment of the principal obligation; and (2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation

within the stipulated period. x x x In this case, Sections 13.1 and 13.2 of the Contract of Guaranty call for the "prompt assignment and conveyance to [Home Guaranty Corporation] of all the corresponding properties in the Asset Pool" that are held as security in favor of the guarantor. Moreover, Sections 13.1 and 13.2 dispense with the need of conducting foreclosure proceedings, judicial or otherwise. Albeit requiring the intervention of the trustee of the Asset Pool, Sections 13.1 and 13.2 spell out what is, for all intents and purposes, the automatic appropriation by the paying guarantor of the properties held as security. This is thus a clear case of *pactum commissorium*. It is null and void. Accordingly, whatever conveyance was made by Planters Development Bank to Home Guaranty Corporation in view of this illicit stipulation is ineffectual. It did not vest ownership in Home Guaranty Corporation.

6. **ID.; ID.; ID.; IMPLIED TRUST WAS CREATED WHEN HOME GUARANTY CORPORATION ACQUIRED THE PROPERTIES COMPRISING THE ASSET POOL THROUGH THE INEFFECTUAL TRANSFER.—** In *Lopez v. Court of Appeals*, properties intended to be for the benefit of "a trust fund for [the testatrix's] paraphernal properties, denominated as *Fideicomiso de Juliana Lopez Manzano (Fideicomiso)*," were mistakenly adjudicated by a probate court in favor of respondents' predecessor-in-interest, Jose Lopez Manzano. These properties were then registered by him, and transfer certificates of title were issued in his name. This court held that "[t]he apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso.*" In *Lopez*, this court held that the factual milieu of that case placed it within the contemplation of Article 1456 of the Civil Code: x x x ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. x x x So, too, this case falls squarely under Article 1456 of the Civil Code. Home Guaranty Corporation acquired the properties comprising the Asset Pool by mistake or through the ineffectual transfer (i.e., for being *pactum commissorium*) made by the original trustee, Planters Development Bank.

APPEARANCES OF COUNSEL

Office of Government Corporate Counsel for petitioner.
Cruz Marcelo and Tenefrancia for respondent.

D E C I S I O N

LEONEN, *J.*:

This is a Petition for Review on Certiorari praying that the assailed Decision[1] dated June 21, 2005 of the Court of Appeals in CA G.R. CV No. 80241 be reversed and set aside. In the alternative, it prays that certain properties supposedly conveyed by respondent La Savoie Development Corporation to petitioner Home Guaranty Corporation[2] be excluded from the rehabilitation plan of La Savoie Development Corporation, should its Petition for Corporate Rehabilitation be given due course.

The assailed Decision of the Court of Appeals reversed and set aside the Order[3] dated October 1, 2003 of the Regional Trial Court, Makati City, reinstated the Stay Order issued by the Regional Trial Court on June 4, 2003, gave due course to La Savoie's Petition for Corporate Rehabilitation, and remanded the case to the Regional Trial Court for further proceedings.[4] The Regional Trial Court's June 4, 2003 Stay Order stayed the enforcement of all claims, monetary or otherwise, and whether in court or otherwise, against La Savoie Development Corporation.

La Savoie Development Corporation (La Savoie) is a domestic corporation incorporated on April 2, 1990. It is engaged in the business of "real estate development, subdivision and brokering."[5]

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[1] *Rollo*, pp. 49-62.

[2] The former Home Insurance and Guaranty Corporation was renamed as Home Guaranty Corporation as per Republic Act No. 8763.

[3] *Rollo*, pp. 84-85.

[4] *Id.* at 76-77.

[5] *Id.* at 66.

With the onset of the Asian financial crisis in 1997, the devaluation of the Philippine peso and due to other factors such as lack of working capital; high interest rates, penalties, and charges; low demand for real estate properties; and poor peace and order situations in some of its project sites, La Savoie found itself unable to pay its obligations to its creditors. Thus, on April 25, 2003, La Savoie filed before the Regional Trial Court, Makati City[6] a "petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan"[7] under the Interim Rules of Procedure on Corporate Rehabilitation[8] (Interim Rules).

The proceedings before the Regional Trial Court were initially held in abeyance as La Savoie failed to attach to its Petition some of the requirements under Rule 4, Section 2 of the Interim Rules.[9] With La Savoie's compliance and finding its "petition

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[6] Pursuant to Supreme Court Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC, " Resolution Designating Certain Branches of Regional Trial Courts to Try and Decide Cases Formerly Cognizable by the Securities and Exchange Commission."

[7] *Rollo*, pp. 65-72.

[8] A.M. No. 00-8-10-SC (2000).

[9] SEC. 2, Contents of the Petition.— The petition filed by the debtor must be verified and must set forth with sufficient particularly all the following material facts: (a) the name and business of the debtor; (b) the nature of the business of the debtor; (c) the history of the debtor; (d) the cause of its inability to pay its debts; (e) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (f) threats or demands to enforce claims or liens againts the debtor; ;and (g) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employee, and stockholders.

The petition shall be accomplished by the following documents:

a. An audited financial statement of the debtor at the end of its last fiscal year;

b. Interim financial statements as of the end of the month prior to the filing of the petition:

c. Schedule of Debts and Liabilities which lists all the creditors of the debtor indicating the name and address of each creditor, the amount of each claim as to principal, interest, or penalties due as of the date of filing, the

to be sufficient in form and substance,"[10] then Regional Trial Court Judge Estela Perlas-Bernabe issued the Stay Order dated June 4, 2003 staying the enforcement of all claims against La Savoie. The entirety of this Order reads:

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nature of the claim, and any pledge, lien, mortgage judgement, or other security given for the payment thereof;

d. An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title thereof in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants.The inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collegibility categorizing them as highly collectible to remotely collectible;

e. A rehabilitation plan which conforms to the minimal requirements set out in Section 5, Rule 4 of these Rules;

f. A Schedule of Payments and disposition of assets which the debtor may have effected within three (3) months immediately preceding the filing of the petition;

g. A Schedule of the Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;

h. A Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;

i. An Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" hereof;

j. At least three (3) nominees for the position of Rehabilitation Receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax number and e-mail address; and

k. A Certificate attesting, under oath, that the (a) filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

Five (5) copies of the petition shall be filed with the court.

[10] *Rollo*, p. 76.

O R D E R

Finding the petition to be sufficient in form and substance, the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against petitioner La Savoie Development Corporation, its guarantors and sureties not solidarily liable with it, is stayed.

As a consequence of the stay order, petitioner is prohibited from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business. It is further prohibited from making any payment of its liabilities outstanding as of the date of the filing of the petition on April 25, 2003. Its suppliers of goods or services are likewise prohibited from withholding supply of goods and services in the ordinary course of business for as long as it makes payments for the services and goods supplied after the issuance of the stay order.

Petitioner is directed to pay in full all administrative expenses incurred after the issuance of the stay order.

The initial hearing on the petition is set on July 22, 2003 at 8:30 o'clock in the morning at the 3rd Floor, Gusali ng Katarungan, F. Zobel St., Makati City.

All creditors and interested parties including the Securities and Exchange Commission are directed to file and serve on petitioner a verified comment on or opposition to the petition with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing. Failure to do so will bar them from participating in the proceedings. Copies of the petition and its annexes may be secured from the court within such time as to enable them to file their comment on or opposition to the petition and to prepare for its initial hearing.

Petitioner is directed to publish this Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks and to file to this Court within five (5) days before the initial hearing the publisher's affidavit showing compliance with the publication requirements.

Mr. Rito C. Manzana with address at 26B One Lafayette Condominium cor. Leviste and Cedeno Manor St., Salcedo Village, Makati City is appointed Rehabilitation Receiver of Petitioner. He may discharge his duties and functions as such after taking his oath

to perform his duties and functions faithfully and posting a bond in the amount of ₱100,000.00 to guarantee the faithful discharge of his duties and obedience to the orders of the court.

Petitioner is directed to immediately serve a copy of this Order to Mr. Manzana who is directed to manifest his acceptance or non-acceptance of his appointment not later than ten (10) days from receipt of this order.

SO ORDERED.

Given this 4th day of June, 2003 at Makati City.

ESTELA PERLAS-BERNABE
[sgd.]
Judge[11]

Following the issuance of the June 4, 2003 Stay Order, La Savoie's creditors — Planters Development Bank, Philippine Veterans Bank, and Robinsons Savings Bank — filed their Comments and/or Oppositions.[12]

Home Guaranty Corporation filed an Opposition[13] even though "it [was] not a creditor of Petitioner."[14] It asserted that it had a "material and beneficial interest in the . . . Petition, in relation to the interest of Philippine Veterans Bank (PVB), Planters Development Bank (PDB), and Land Bank of the Philippines (LBP), which are listed as creditors of Petitioner vis-à-vis certain properties or assets that might have been taken cognizance of, and placed under the custody of the [Regional Trial] Court and[/]or the appointed Rehabilitation Receiver."[15]

Home Guaranty Corporation noted that through the "La Savoie Asset Pool Formation and Trust Agreement"[16] (Trust Agreement),

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[11] *Id*. at 76-77.

[12] *Id*. at 1109-1112 and 1163-1167.

[13] *Id*. at 78-81.

[14] *Id*. at 78.

[15] *Id*.

[16] *Id*. at 1047-1062.

La Savoie obtained financing for some of its projects through a securitization process in which Planters Development Bank as nominal issuer issued ₱150 million in asset participation certificates dubbed as the "La Savoie Development Certificates"[17] (LSDC certificates) to be sold to investors. The projects financed by these certificates consisted of the development of real properties in General Trias, Cavite; Sto. Tomas, Batangas; Los Baños, Laguna; and Quezon City. The same properties were conveyed in trust by La Savoie, as trustor, to Planters Development Bank, as trustee, and constituted into the La Savoie Asset Pool (Asset Pool).[18]

The redemption of the LSDC certificates upon maturity and the interest payments on them were "backed/collateralized by the assets that were conveyed by [La Savoie] to the Trust."[19] Moreover, the LSDC certificates were covered by a guaranty extended by Home Guaranty Corporation through a "Contract of Guaranty"[20] entered into by Home Guaranty Corporation with La Savoie and Planters Development Bank.

Section 17 of the Contract of Guaranty designates Home Guaranty Corporation to "undertake financial controllerships of the Projects."[21] Thus, in its Opposition, Home Guaranty Corporation noted that it was "charged with the duty of ensuring that all funds due to the Asset Pool are collected, and that funds are disbursed for the purposes they were intended for."[22]

Home Guaranty Corporation added that in the course of its business, La Savoie collected a total amount of ₱60,569,134.30 from the buyers of some of the properties covered by the Asset Pool. This amount, however, was not remitted by La Savoie to

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[17] *Id*. at 79.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 1091-1095.

[21] *Id*. at 1095.

[22] *Id*. at 79.

the trust. With La Savoie's failure to complete some of its projects and failure to remit sales collections, the Asset Pool defaulted in redeeming and paying interest on the LSDC certificates. Thus, La Savoie's investors placed a call on the guaranty.[23] With La Savoie's failure to remit collections, however, Home Guaranty Corporation held in abeyance the settlement of the investors' call. This settlement was then overtaken by the filing of La Savoie's Petition for Rehabilitation.[24]

Home Guaranty Corporation argued that it and the investors on the LSDC certificates had "preferential rights"[25] over the properties making up the Asset Pool as these "were conveyed as security or collaterals for the redemption of the [LSDC certificates]."[26] Thus, they should be excluded from the coverage of La Savoie's Petition for Rehabilitation.

On September 1, 2003, La Savoie filed a Consolidated Answer[27] to the Comments/Oppositions. It argued that the assignment of assets to the Asset Pool was not absolute and subject to certain conditions. Specifically, it asserted that for the assignment to take effect, Home Guaranty Corporation had to first pay the holders of the LSDC certificates. Thus, La Savoie claimed that the properties comprising the Asset Pool remained to be its assets.[28]

In the interim, a Verification Report on Accuracy of Petition was filed by the Rehabilitation Receiver.[29]

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[23] *Id*. at 80. As supposedly shown by Planters Development Bank's Letter dated October 12, 2001, November 13, 2001, and June 14, 2002; Annexes "C", "D", and "E", respectively, of Home Guaranty Corporation's Opposition.

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

[25] *Id*. at 80.

[26] *Id*.

[27] *Id*. at 1198-1205.

[28] *Id*. at 1201-1202.

[29] *Id*. at 52-53.

On October 1, 2003, the Regional Trial Court issued an Order[30] denying due course to La Savoie's Petition for Rehabilitation and lifting the June 4, 2003 Stay Order. The trial court reasoned that the "findings of sufficiency in the form and substance of the petition for which a stay order was issued has been flawed"[31] and that "[i]t cannot countenance a situation such as this where the petitioner files a petition on the basis of inaccurate or unverifiable allegations and false representations."[32] It noted that per the Rehabilitation Receiver's Report, there were "various inaccuracies in the material allegations of the petition and its annexes."[33] Several documents "to verify other material statements made therein" were also lacking.[34] It added that La Savoie "has not presented any concrete and feasible plan on how it will be able to secure additional funds to continue with the development of its raw land and on-going joint-venture projects."[35]

Aggrieved, La Savoie filed an Appeal before the Court of Appeals. It filed its Appellant's Brief on May 5, 2004.[36]

In the meantime, Home Guaranty Corporation approved and processed the call on the guaranty for the redemption of the LSDC certificates. Thus, Home Guaranty Corporation, through Planters Development Bank, paid a total of ₱128.5 million as redemption value to certificate holders. Acting on this, Planters Development Bank executed a "Deed of Assignment and Conveyance"[37] in favor of Home Guaranty Corporation through which, in the words of Home Guaranty Corporation, Planters Development Bank "absolutely conveyed and assigned to [Home

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[30] *Id.* at 84-85.

[31] *Id.* at 85.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 1288-1322.

[37] *Id.* at 1491-1493.

Guaranty Corporation] the ownership and possession of the entire assets that formed part of the La Savoie Asset Pool."[38] Home Guaranty Corporation claims, in addition, that, through the same Deed, Planters Development Bank "absolutely conveyed and assigned to [Home Guaranty Corporation] the right to collect from [La Savoie] cash receivables . . . representing the amount collected by [La Savoie] from sales in the course of the development of the projects which it failed to remit to the Trust."[39]

On August 18, 2004, Home Guaranty Corporation filed its Appellee's Brief.[40] It argued that all of the properties comprising the Asset Pool should be excluded from the rehabilitation proceedings in view of the Deed of Assignment and Conveyance executed in its favor by Planters Development Bank.[41] Attached to this Brief was a copy of the Deed of Assignment and Conveyance.[42]

In the Decision[43] dated June 21, 2005, the Court of Appeals Special Twelfth Division reversed and set aside the Regional Trial Court's October 1, 2003 Order, reinstated the Stay Order, gave due course to the Petition for Rehabilitation, and remanded the case to the trial court for further proceedings.

The Court of Appeals characterized the inaccuracies noted by the trial court as "minor" and "trivial,"[44] as well as insufficient to render as "false" the allegations made by La Savoie in its

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[38] *Id*. at 25.

[39] *Id*. at 26.

[40] *Id*. at 26-27.

[41] *Id*.

[42] *Id*. at 1472.

[43] *Id*. at 49-62.

The Decision, docketed as CA-G.R. CV. No. 80241, was penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices, now Supreme Court Justices, Martin S. Villarama, Jr. and Lucas P. Bersamin, of the Special Twelfth (12th) Division, Court of Appeals Manila.

[44] *Id*. at 56.

Petition for Rehabilitation. It added that La Savoie "convincingly showed that it could undertake to market its projects through [the] Pag-Ibig Overseas Program, sell the existing inventories of unsold subdivision lots and use the un-remitted collections due to HGC which will be converted as additional loan to fund its on-going projects."[45] Regarding Home Guaranty Corporation's payment of the guaranty call, the Court of Appeals noted that it was made after the Petition for Rehabilitation had been brought by La Savoie and after the issuance of the Stay Order; thus, Home Guaranty Corporation had no right to make such payment.

On August 12, 2005, Home Guaranty Corporation filed before this court the present Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure.[46]

Home Guaranty Corporation asserts that the properties comprising the Asset Pool should be excluded from the rehabilitation proceedings as these have now been "removed from the dominion"[47] of La Savoie and have been conveyed and assigned to it. It underscores that the transfer made to it by Planters Development Bank was made after the Stay Order had been lifted, per the Regional Trial Court's October 1, 2003 Order.

On October 28, 2005, La Savoie filed its Comment.[48] It claimed that the supposed assignment and conveyance to Home Guaranty Corporation was ineffectual considering that "at the time of the guaranty call, the Stay Order dated 04 June 2003 was admittedly in effect."[49] La Savoie faulted Home Guaranty Corporation for supposedly not adducing proof of the transfer effected to it by Planters Development Bank on the strength of its payment on the guaranty. It added that, even assuming there was full payment

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[45] *Id*. at 58.

[46] *Id*. at 13-44.

[47] *Id*. at 37.

[48] *Id*. at 161-202.

[49] *Id*. at 194.

and that the Deed of Assignment and Conveyance was executed, "the Subject Properties remained within the jurisdiction of the [Regional Trial Court] even after the lifting of the Stay Order dated 04 June 2003"[50] and that, as a result, "any contract or document affecting title to the Subject Properties is also subject to the rehabilitation proceedings pending with the [trial court]."[51] It also asserted that by paying the guaranty, Home Guaranty Corporation effectively became its creditor. Excluding the properties comprising the Asset Pool from the rehabilitation proceedings would then be tantamount to giving preference to one creditor, something which is prohibited in rehabilitation proceedings.

Apart from these, La Savoie ascribes procedural infirmities against Home Guaranty Corporation's Petition. First, it claimed that Atty. Danilo C. Javier, the officer who signed the Petition's verification and certification of non-forum shopping was not authorized to do so. Second, it claimed that Home Guaranty Corporation engaged in forum shopping.

On February 6, 2006, Home Guaranty Corporation filed its Reply to La Savoie's Comment.[52] In response to La Savoie's allegation that there was no proof of its payment of the redemption value of the LSDC certificates and the resultant transfer to it of the Asset Pool, Home Guaranty Corporation noted that the following documents were already attached to its Appellee's Brief and were re-attached to its Reply: the Deed of Assignment and Conveyance; the Trust Agreement; the Contract of Guaranty; and certificates of title covering each of the properties comprising the Asset Pool.

For resolution is the central issue of whether the properties comprising the Asset Pool should be excluded from the proceedings on La Savoie Development Corporation's Petition for Rehabilitation. The resolution of this issue hinges on whether

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[50] *Id*. at 196.

[51] *Id*.

[52] *Id*. at 1453-1477.

the conveyance to Home Guaranty Corporation of the properties comprising the Asset Pool was valid and effectual. The resolution of this is, in turn, contingent on the following:

First, whether following the issuance of the Regional Trial Court's October 1, 2003 Order and pending La Savoie's Appeal, Home Guaranty Corporation was barred from making payment on the guaranty call, and Planters Development Bank, concomitantly barred from conveying the properties comprising the Asset Pool to Home Guaranty Corporation; and

Second, whether the payment by Home Guaranty Corporation and the conveyance of the properties by Planters Development Bank made Home Guaranty Corporation a creditor of La Savoie and whether recognizing the validity of the transfer made to Home Guaranty Corporation was tantamount to giving it inordinate preference as a creditor.

Apart from these are the procedural errors ascribed by La Savoie to Home Guaranty Corporation and thus the following issues:

First, whether Atty. Danilo C. Javier was authorized to sign the verification and certificate of non-forum shopping of Home Guaranty Corporation's Petition; and

Second, whether Home Guaranty Corporation engaged in forum shopping.

I

Atty. Danilo C. Javier was authorized to sign the verification and certificate of non-forum shopping on behalf of Home Guaranty Corporation.

As pointed out by Home Guaranty Corporation, its board of directors issued Board Resolution No. 30, Series of 2001, "specifically authorizing the President of petitioner to designate the officer to institute the appropriate legal actions[.]"[53] It was pursuant to this resolution that Atty. Danilo C. Javier, Home

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[53] *Id*. at 1455.

Guaranty Corporation's then Officer-in-Charge and Vice President for Legal, was made signatory to the present Petition's verification and certification of non-forum shopping.

The relevant portion of this Resolution reads:

> The request for authority for the HGC President, Executive Vice-President and Vice Presidents as the President may designate or authorize, to institute appropriate legal actions as the President may deem proper or necessary to protect the interest of the corporation be, as it is hereby approved.
>
> Resolved Further That, the said authority shall include but not be limited to, the verification of Complaints, Petitions, Answer, Reply and other initiatory or responsive pleadings as the circumstances may warrant. . . .[54]

II

La Savoie pointed out that (as of the time of the filing of its Comment) another case between Home Guaranty Corporation and La Savoie, docketed as Civil Case No. 05314, was pending before the Makati City Regional Trial Court.[55]

In its reply, Home Guaranty Corporation acknowledged the pendency of Civil Case No. 05314. It, however, pointed out that it could not have been guilty of forum shopping as the present case is an offshoot of a Petition for Corporate Rehabilitation while Civil Case No. 05314 is an action for injunction, *mandamus*, specific performance, and sum of money with application for temporary restraining order and/or preliminary prohibitory and mandatory injunction.[56] Home Guaranty Corporation claimed that it had to file Civil Case No. 05314 to compel La Savoie to remit to it payments collected from the buyers of La Savoie's real estate development projects and

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[54] *Id*.

[55] *Id*. at 186.

[56] *Id*. at 1461.

which La Savoie was supposedly wrongly withholding from it considering that Home Guaranty Corporation was now the owner of the properties comprising the Asset Pool.

Aboitiz Equity Ventures v. Chiongbian[57] discussed forum shopping:

> The concept of and rationale against forum shopping were explained by this court in *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*:[58]
>
> > FORUM SHOPPING is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.[59]

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[57] G.R. No. 197530, July 9, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/197530.pdf> [Per *J.* Leonen, Third Division].

[58] 457 Phil. 740 (2003) [Per *J.* Bellosillo, Second Division].

[59] *Id.* at 747-748, *citing Santos v. Commission on Elections*, 447 Phil. 760 (2003) [Per *J.* Ynares-Santiago, *En Banc*]; *Young v. Keng Seng*, 446 Phil. 823 (2003) [Per *J.* Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266 (1998) [Per *J.* Mendoza, *En Banc*]; *Joy Mart Consolidated Corp. v. Court of Appeals*, G.R. No. 88705, June 11, 1992, 209 SCRA 738 [Per *J.* Griño-Aquino, First Division]; *Villanueva v. Adre*, 254 Phil. 882 (1989) [Per *J.* Sarmiento, Second Division].

Equally settled is the test for determining forum shopping. As this court explained in *Yap v. Chua*:[60]

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[61]

Litis pendentia "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[62] It requires the concurrence of three (3) requisites: "(1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."[63]

In turn, prior judgment or *res judicata* bars a subsequent case when the following requisites concur: "(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action."[64]

It is not disputed that there is identity of parties in the present Petition and in Civil Case No. 05314. Home Guaranty

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[60] G.R. No. 186730, June 13, 2012, 672 SCRA 419 [Per *J*. Reyes, Second Division], citing *Young v. Keng Seng*, 446 Phil. 823, 833 (2003) [Per *J*. Panganiban, Third Division].

[61] *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428 [Per *J*. Reyes, Second Division].

[62] *Id*.

[63] *Id*. at 429, citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per *J*. Austria-Martinez, Third Division].

[64] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per *J*. Panganiban, Third Division], *citing Allied Banking Corporation v. Court of Appeals,* G.R. No. 108089, January 10, 1994, 229 SCRA 252, 258 [Per *J*. Davide, Jr., First Division].

Corporation, however, argues that it could not have been guilty of forum shopping as the relief it sought via Civil Case No. 05314 (i.e., the restraining of collections and remission to it of funds collected by La Savoie) is different from the relief it is seeking in the present Appeal from the Court of Appeals' Decision giving due course to La Savoie's Petition for Corporate Rehabilitation.

The divergence in specific reliefs sought notwithstanding, Home Guaranty Corporation's bases for these reliefs are the same. In Civil Case No. 05314, Home Guaranty Corporation asked that La Savoie cease collecting payments and that collected payments be remitted to it *because it supposedly now owns the real estate development projects of La Savoie that form part of the Asset Pool*. In the present Appeal, Home Guaranty Corporation asks that the properties forming part of the Asset Pool be excluded from corporate rehabilitation proceedings *because it, and no longer La Savoie, is the owner of these properties*.

Thus, in both cases, Home Guaranty Corporation is invoking the same right and is proceeding from the same cause of action, i.e., its supposed ownership. True, there is divergence in the details of the specific reliefs it is seeking, but Home Guaranty Corporation is seeking the same *basic* relief, i.e., the recognition of its alleged ownership. The exclusion of the properties from corporate rehabilitation proceedings and the remittance to it of payments are mere incidents of this basic relief. Accordingly, in simultaneously pursuing the present case and Civil Case No. 05314, Home Guaranty Corporation engaged in forum shopping.

It is worth emphasizing that the present Petition or Appeal, being a mere offshoot of La Savoie's original Petition for Rehabilitation, is *not* the act constitutive of forum shopping. Forum shopping was committed not through the filing of this Appeal but through the filing of Civil Case No. 05314 before the Regional Trial Court. In any case, apart from this procedural lapse, we find the transfer of the Asset Pool to Home Guaranty Corporation, without going through foreclosure proceedings, to be in violation of the rule against *pactum commissorium*. It is

ineffectual and does not divest La Savoie of ownership. Thus, even if valid payment was made by Home Guaranty Corporation on its guaranty, ownership of the properties comprising the Asset Pool was not vested in it. Accordingly, Home Guaranty Corporation must await the disposition of La Savoie's Petition for Rehabilitation in order that a resolution may be had on how La Savoie's obligations to it shall be settled.

III

A necessary step in resolving this Petition is a consideration of the parties and the rights and obligations they have as against each other, as borne by the agreements they entered into and which now bind them.

The Trust Agreement[65] stated that La Savoie, as "landowner/ developer," had subdivision and housing projects in several areas that were collectively referred to as the "La Savoie Project" or simply as the "Project." Its first preambular clause reads:

> WHEREAS, the LANDOWNER/DEVELOPER, has subdivision and housing projects located in San Rafael, Bulacan; Banlat, Quezon City; Gen. Trias, Cavite[;] Sto. Tomas, Batangas; and Los Baños, Laguna, totalling 37 hectares, more or less, collectively called the La Savoie Project (the PROJECT)[.][66]

On how the project was to be financed, the Trust Agreement added that "the development and implementation of the PROJECT [was to be] funded through the issuance and sale of asset participation certificates known as La Savoie Development Certificates." Planters Development Bank was specified to be the "nominal issuer" of these certificates. The Trust Agreement's second and fourth preambular clauses as well as its Section 4.5 read:

> WHEREAS, the development and implementation of the PROJECT will be funded through the issuance and sale of asset participation certificates known as La Savoie Development Certificates (the

[65] *Rollo*, pp. 1047-1062.

[66] *Id*. at 1047.

LSDCs) backed by the asset pool consisting of said real estate properties and the products and results of their planned development;[67]

. . . .

WHEREAS, the LANDOWNER/DEVELOPER has appointed the Planters Development Bank as TRUSTEE and nominal issuer and Planters Development Bank through its Trust Department has agreed to perform the functions and responsibilities of a TRUSTEE as defined hereunder;[68]

. . . .

Section 4.5. Nominal Issuer. The TRUSTEE shall act as nominal issuer only of all LSDCs. In no case shall the TRUSTEE be liable for the payment of any amount due to the holder of the LSDC. The TRUSTEE shall be free from any liability in the event that the Asset Pool is not sufficient for the redemption of all the LSDCs. In the event of the non-payment of the LSDC, the LSDC holder's exclusive recourse shall be to claim against the HIGC guarantee. The TRUSTEE shall not be responsible for the failure of HIGC to pay any amount due to any holder of the LSDC.[69]

These LSDC certificates were "backed" or secured by "real estate properties and the products and results of their planned development." More specifically, Section 3.1 of the Trust Agreement provides for the establishment of the Asset Pool in which La Savoie "convey[ed], assign[ed], deliver[ed] all its rights and interests in the real estate properties . . . to the TRUSTEE for the present and future holders of LSDCs." The third preambular clause and Section 3.1 of the Trust Agreement read:

WHEREAS, the LANDOWNER/DEVELOPER has agreed to convey the real estate properties of the PROJECT to a TRUSTEE to form the La Savoie Project (LSP) Asset Pool which shall be held by the TRUSTEE for the pro rata and pro indiviso benefit of the holders of the LSDCs to the extent defined in this Agreement and, residually for the benefit of the LANDOWNER/DEVELOPER;[70]

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[67] *Id.*

[68] *Id.*

[69] *Id.* at 1054.

[70] *Id.* at 1047.

. . . .

Section 3.1. Establishment of Starting Asset Pool. The LANDOWNER/ DEVELOPER hereby establishes a trust, for purposes of this securitization and formation of the corresponding Asset pool, out of the properties pertaining to the PROJECT development and operation, and accordingly does hereby convey, assign and deliver all its rights and interests in the real estate properties identified and described through their respective transfer certificates of title (TCTs) listed in Annex B through B-1 covering properties for Las Palmas Village in Sto. Tomas, Batangas[;] Buenavista Park in San Rafael, Bulacan; Gen. Trias Homes in Gen. Trias, Cavite; and La Chesa Heights in Tandang Sora, Q.C.; Annex C through C-2 covering properties for La Chesa Valley Estate owned by MHC Realty under a Joint-Venture Agreement with [La Savoie Development Corporation]; Annex D covering properties owned by Lenard Lopez under a Joint Venture Agreement with [La Savoie Development Corporation]; together with Annexes E and F the Joint Venture Agreements with MHC Realty Corporation and Lenard Lopez together with the Supplemental Agreements, attached as integral parts hereof, together with all present and future improvements thereon and the corresponding muniments of ownership of the properties, subject to the reservations concerning the interests of joint-venturers defined hereunder, to the TRUSTEE for the benefit of the present and future holders of the LSDCs, in accordance with the terms and conditions provided herein.

The reservations above-stated refer to the interests of the joint-venturers of the LANDOWNER/DEVELOPER as follows:. . . .[71]

Per the Trust Agreement's fourth preambular clause, Planters Development Bank was named trustee of the Asset Pool. The same clause specified that it held the Asset Pool "for the pro rata and pro indiviso benefit of the holders of the LSDCs . . . and, residually for the benefit of the [landowner/developer, i.e., La Savoie]." Moreover, in Section 3.2 of the Trust Agreement:

Section 3.2. Acceptance by the TRUSTEE. The TRUSTEE hereby acknowledges and accepts the documents delivered by the LANDOWNER/DEVELOPER and signed for by the TRUSTEE and

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[71] *Id.* at 1051-1052.

the property interests and rights conveyed in Section 3.1, as well as those which may from time to time be conveyed and intended to form part of the Asset Pool, and declares that the said TRUSTEE holds and will hold the said documents and assets, including properties and values yet to be received by it as TRUSTEE under this Agreement, for the benefit of all present and future holders of the LSDCs, as well as the ultimate owner(s) of the residual assets and values of the Asset Pool, all in accordance with the terms and conditions of this Trust Agreement.[72]

Apart from the Asset Pool, the LSDC certificates were also secured by a guaranty. The guaranty was referenced in the Trust Agreement in the following provisions:

ARTICLE I
DEFINITION OF TERMS

The following words and phrases used in this Agreement shall have the respective meanings hereunder indicated unless the contrary clearly appears from the context:

. . . .

4. Contract of Guaranty – shall refer to the Contract of Guaranty executed by and among the TRUSTEE, HIGC and the LANDOWNER/DEVELOPER dated _____, a copy of which is hereto attached as Annex A including any amendment/revision and modification, thereof.

. . . .

6. Guarantor – shall refer to the Home Insurance and Guaranty Corporation (HIGC).[73]

. . . .

Section 2.4. The Home Insurance and Guaranty Corporation. The roles and responsibilities of the HIGC shall be as follows:

2.4.1 Provide guaranty coverage for the LSDCs in accordance with its policies and as provided for in its Contract of Guaranty executed by the parties.

[72] *Id*. at 1052.

[73] *Id*. at 1048.

2.4.2 Act as the Financial Controller in the implementation of the PROJECTS involved in accordance with the Operations and Accounting Manual as approved by the Governing Board.

2.4.3 Designate its representative in the Governing Board who shall act as the Chairman thereof.[74]

Section 3.4 of the Trust Agreement provides that in the event that a call is made on Home Guaranty Corporation for its guaranty, Planters Development Bank shall convey to the former the Asset Pool:

Section 3.4. Conveyance to HIGC. Express authority is hereby granted by the LANDOWNER/DEVELOPER to the TRUSTEE that in the event of call upon the HIGC guaranty for unredeemed LSDCs and in order to effect the redemption of the same by the latter, to make the absolute conveyance to HIGC of the entire Asset Pool, subject to the reservations regarding joint-venturers [sic] interests as defined in Section 3.1, a and b above and subject further to the provision of the aforementioned Contract of Guaranty.[75]

This conveyance shall be on the strength of the special power of attorney executed by La Savoie in favor of Planters Development Bank, in accordance with Section 2.1.6 of the Trust Agreement:

Section 2.1. – The LANDOWNER/DEVELOPER shall:

. . . .

2.1.6 Execute and deliver to the TRUSTEE an irrevocable Special Power of Attorney a Secretary's Certificate per enclosed Annex G giving the TRUSTEE the full power and authority to make the absolute conveyance of the entire LSP Asset Pool in favor of the HIGC in the event of call upon the HIGC guaranty for unredeemed LSDCs and in order to effect the redemption of the same by the HIGC in accordance with the provisions of the Contract of Guaranty.[76]

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[74] *Id*. at 1051.

[75] *Id*. at 1053.

[76] *Id*. at 1049-1050.

In sum, these contractual provisions evince the following relations:

1. A trust relation, with respect to the Asset Pool, in which La Savoie is the trustor, Planters Development Bank is the trustee, and the holders of the LSDC certificates are the beneficiaries;

2. A credit relation, with respect to the LSDC certificates, in which La Savoie is the debtor (Planters Development Bank being a mere nominal issuer), the holders of the LSDC certificates are the creditors, and Home Guaranty Corporation is the guarantor. (It will be recalled that Home Guaranty Corporation itself acknowledged, in the Opposition it filed before the Regional Trial Court, that it was not a creditor of La Savoie.); and

3. An agency relation, with respect to the transfer of the real properties in the Asset Pool should the guarantor pay for the LSDC certificates, in which La Savoie is the principal and Planters Development Bank is the agent. In this event, Home Guaranty Corporation is the transferee.

On Home Guaranty Corporation's guaranty, Section 12 of the Contract of Guaranty entered into by Home Guaranty Corporation, La Savoie and Planters Development Bank provide for the events in which Home Guaranty Corporation may be called to pay for the LSDC certificates:

12. Events guaranteed against – For the purpose of enforcing the benefit of guaranty herein provided[,] any of the following events must occur:

12.1. Failure to pay the interest due on the LSDCs on their payment dates from the Asset Pool; or

12.2 Failure to redeem or pay all or some of the LSDCs upon maturity from the Asset Pool; or

12.3 Declaration of an off-mark liquidation of the Asset Pool. An off-mark liquidation shall be declared by the Trustee upon written advice of HIGC that there is:

(a) a twenty-five percent (25%) slippage on each of the following:

1. construction time table/cost/quality;
2. marketing in terms of units sold;
3. cash inflows of equity payments and or buyers' take-outs; or

(b) if the slippage items above reach a total of fifty percent (50%) whichever comes first.[77]

Section 13 of the Contract of Guaranty provides for how guaranty claims are to be processed and paid by Home Guaranty Corporation. Likewise, it echoes Section 3.4 of the Trust Agreement in providing for transfer of the Asset Pool in the event of a call on the guaranty:

13. Payment of Guaranty Claim – Should any of the events mentioned in Sec. 12 hereof occur, the Trustee, on behalf of the Certificate holders, shall file its guaranty claim with HIGC within sixty (60) working days from the occurrence of the event.

13.1. Upon receipt of the guaranty claim filed by the Trustee, HIGC shall have thirty (30) working days to evaluate the guaranty claim. Within such period, HIGC shall acknowledge the guaranty claim and require from the Trustee submission of the required documents, as follows:

a. Deed of Assignment and Conveyance to HIGC of the entire Asset Pool pursuant to the Trust Agreement;

b. All tax declarations, transfer certificates of title, original certificates of title and official receipts of payments of real estate taxes covering properties comprising the Asset Pool; and,

c. All other documents and papers in the Asset Pool, as defined in the Trust Agreement.

[77] *Id*. at 1093-1094.

13.2 Upon receipt of the acknowledgment by HIGC of the guaranty claim, the Trustee shall submit the documents and make a prompt assignment and conveyance to HIGC of all the corresponding properties in the Asset Pool pursuant to the Trust Agreement.

13.[3] Within fifteen (15) calendar days from receipt of the conveyance of the entire Asset Pool from the Trustee, HIGC shall release on behalf of the Certificate Holders the payment of the guaranty claim.[78]

As against these contractual delimitations were the contingencies that arose in the course of the rehabilitation proceedings. These, along with the bounds set by law and established by the parties' contractual relations, defined the competencies of the parties and determined the validity of their actions.

It is not disputed that La Savoie defaulted in the redemption and in the payment of interest on the LSDC certificates. It is also settled that a call was made on Home Guaranty Corporation to pay for the LSDC certificates, pursuant to the provisions of the Trust Agreement and the Contract of Guaranty. However, as acknowledged by Home Guaranty Corporation, any payment that it could have made was "overtaken"[79] by the filing of La Savoie's Petition for Rehabilitation.

Thereafter, the Regional Trial Court issued its June 4, 2003 Stay Order staying "the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against [La Savoie], its guarantors and sureties not solidarily liable with it."[80] It also "prohibited [La Savoie] from making any payment of its liabilities outstanding as of the date of the filing of the petition on April 25, 2003."[81]

The issuance of the June 4, 2003 Stay Order was in accordance with Rule 4, Section 6 of this court's November 21, 2000

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[78] *Id*. at 1094.

[79] *Id*. at 80.

[80] *Id*. at 76.

[81] *Id*.

Resolution in A.M. No. 00-8-10-SC, otherwise known as the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). Though subsequently replaced in 2013 by the Financial Rehabilitation Rules of Procedure,[82] the Interim Rules was in effect at the time of the incidents relevant to this case and which then governed "petitions for rehabilitation filed by corporations, partnerships, and associations pursuant to Presidential Decree No. 902-A, as amended."

Rule 4, Section 6 of the Interim Rules reads:

Sec. 6. Stay Order. - If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) *staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor*; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) *prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition*; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and

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[82] A.M. No. 12-12-11-SC (2013), Financial Rehabilitation Rules of Procedure. This was promulgated pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition. (Emphasis supplied)

With the issuance of this Stay Order, the claims of La Savoie's creditors, including those of the holders of the LSDC certificates, were barred from being enforced. From the point of view of La Savoie and "its guarantors and sureties not solidarily liable with it,"[83] no payment could have been made by them. Thus, *for as long as the Stay Order was in effect*, certificate holders were barred from insisting on and receiving payment, whether from the principal debtor, La Savoie, or from the guarantor, Home Guaranty Corporation. Conversely, La Savoie and Home Guaranty Corporation were barred from paying certificate holders *for as long as the Stay Order was in effect*.

On October 1, 2003, the Regional Trial Court issued another Order denying due course to La Savoie's Petition for Rehabilitation and lifting the June 4, 2003 Stay Order. Aggrieved, La Savoie filed a Notice of Appeal and thereafter filed before the Court of Appeals its Appellant's Brief on May 5, 2004. Home Guaranty Corporation filed its Appellee's Brief on August 18, 2004. On June 21, 2005, the Court of Appeals rendered a Decision reversing and setting aside the Regional Trial Court's October 1, 2003 Order and reinstating the June 4, 2003 Stay Order.

What is notable, however, is what transpired in the interim. Sometime between La Savoie's filing of its Appellant's Brief and Home Guaranty Corporation's filing of its Appellee's Brief, Home Guaranty Corporation approved and processed the call that was made, prior to the commencement of rehabilitation proceedings, on its guaranty and proceeded to pay the holders of LSDC certificates a total amount of ₱128.5 million as redemption value. In consideration of this and pursuant to Section 13.2 of the Contract of Guaranty, Planters Development Bank executed in favor of Home Guaranty Corporation a Deed of Assignment

[83] *Rollo*, p. 76.

and Conveyance[84] in which Planters Development Bank "absolutely assign[ed], transferred[ed], convey[ed] and deliver[ed] to the HGC, its successor and assigns the possession and ownership over the entire Asset Pool Project."[85]

Home Guaranty Corporation asserts that the execution of this Deed effectively removed the properties comprising the Asset Pool from the dominion of La Savoie and, thus, beyond the reach of La Savoie's rehabilitation proceedings. La Savoie contends that this transfer was ineffectual as the Stay Order was in effect at the time of the execution of the Deed and as affirming Home Guaranty Corporation's ownership is supposedly tantamount to giving it undue preference as a creditor.

Rule 3, Section 5 of the Interim Rules governs the effectivity of orders issued in proceedings relating to the rehabilitation of corporations, partnerships, and associations under Presidential Decree No. 902-A, as amended.

> Sec. 5. Executory Nature of Orders. - ***Any order*** *issued by the court under these Rules is* ***immediately executory***. A petition for review or *an appeal therefrom shall not stay the execution of the* ***order unless restrained or enjoined by the appellate court***. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court: Provided, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner. (Emphasis supplied)

Rule 3, Section 5 is definite and unambiguous: Any order issued by the trial court in rehabilitation proceedings is immediately executory. Rule 3, Section 5 makes no distinction as to the kinds of orders (*e.g.*, final or interlocutory and stay orders) that may be issued by a trial court. Nowhere from its text can it be gleaned that it does not cover orders such as those issued by the trial court on October 1, 2003. If at all, its second sentence, which explicitly makes reference to orders on appeal, affirms

[84] *Id.* at 1492-1493.

[85] *Id.* at 1492.

that it is equally applicable to final orders. *We entertain no doubt that Rule 3, Section 5 of the Interim Rules covered the trial court's October 1, 2003 Order dismissing the Petition for Rehabilitation and lifting the Stay Order. The same Order was thus immediately executory.*

The filing of La Savoie's Appeal did not restrain the effectivity of the October 1, 2003 Order. It is true that generally, an appeal stays the judgment or final order appealed from.[86] Rehabilitation proceedings, however, are not bound by procedural rules spelled out in the Rules of Court. The Interim Rules, not the Rules of Court, was the procedural law, which (at the time of the pivotal incidents in this case) governed rehabilitation proceedings. In Rule 3, Section 5, the Interim Rules explicitly carved an exception to the general principle that an appeal stays the judgment or final order appealed from. It explicitly requires the issuance by the appellate court of an order enjoining or restraining the order appealed from.

Per the records, the Court of Appeals did not issue an injunctive writ or a temporary restraining order. Neither did La Savoie specifically pray for its issuance in the Appellant's Brief it filed before the Court of Appeals. The prayer of this Brief reads:

> WHEREFORE, Petitioner-Appellant most respectfully pray [sic] that the Order dated October 1, 2003, dismissing the Petition BE SET ASIDE and after due consideration a judgment be rendered giving due course to the Petition for rehabilitation and declaring the herein petitioner-appellant in a state of suspension of payments, and

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[86] Rules of Court, Rule 34, Sec. 4 provides:

Section 4. Judgments not stayed by appeal. — Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not, be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

reinstating the Stay Order and finally, approving the Proposed Rehabilitation Plan.

Other relief and remedies are deemed just and equitable under the premises are likewise prayed for.

RESPECTFULLY SUBMITTED.[87]

Thus, the October 1, 2003 Order, lifting the restrictions on the payment of claims against La Savoie, remained in effect. La Savoie's creditors were then free to enforce their claims. Conversely, La Savoie and "its guarantors and sureties not solidarily liable with it"[88] were no longer restrained from effecting payment.

Specifically, Home Guaranty Corporation as guarantor was capacitated, in accordance with Sections 12 and 13 of the Contract of Guaranty to effect payment to the holders of the LSDC certificates.

Per Sections 13.1 and 13.2 of the Contract of Guaranty, the consequence of this payment was the execution by Planters Development Bank, as trustee of the Asset Pool, of a Deed of Conveyance in favor of Home Guaranty Corporation. Ostensibly, all formal and substantive requisites for the execution of this Deed, as per the Trust Agreement and the Contract of Guaranty, were fulfilled. Notably, La Savoie failed to intimate that any such condition or requisite was not satisfied. It assails the conveyance on only these points: first, the supposed continuing effectivity of the June 4, 2003 Stay Order; second, that the Asset Pool remained under the jurisdiction of the Makati City Regional Trial Court; and third, the supposed violation of the rule against preference among creditors.

Having established that the Stay Order was lifted and that this lifting remained in force and was not restrained, we turn to La Savoie's contention that the conveyance to Home Guaranty Corporation of the Asset Pool is in violation of the rule against preference of creditors.

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[87] *Rollo*, p. 120.

[88] *Id*. at 76.

La Savoie cites Article 2067[89] of the Civil Code and argues that with Home Guaranty Corporation's payment of the LSDC certificates' redemption value, Home Guaranty Corporation was subrogated into the rights of La Savoie's creditors (i.e., the certificate holders). It asserts that "effectively, petitioner HGC is already the creditor of respondent La Savoie"[90] and that as creditor, it cannot be given a preference over the assets of La Savoie, something that is "prohibited in rehabilitation proceedings."[91]

In support of its contentions, La Savoie cites the following portion of this court's discussion in *Araneta v. Court of Appeals*:[92]

> This Court in *Alemar's Sibal & Sons, Inc. vs. Elbinias* explained the rationale behind a SEC order for suspension of payments and of placing a corporation under receivership thus:
>
> > It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.
> >
> > During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.
> >
> > As between creditors, the key phrase is "equality is equity (Central Bank vs. Morfe, 63 SCRA 114, citing Ramisch vs.

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[89] Article 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

[90] *Rollo*, p. 197.

[91] *Id*.

[92] G.R. No. 95253, July 10, 1992, 211 SCRA 390 [Per *J*. Nocon, Second Division].

> Fulton, 41 Ohio App. 443, 180 N.E. 735)." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.[93]

It is true, as La Savoie asserts, that the suspension of the enforcement of claims against corporations *under receivership* is intended "to prevent a creditor from obtaining an advantage or preference over another."[94] This is "intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora."[95] In *Spouses Sobrejuanite v. ASB Development Corporation*:[96]

> The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[97]

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[93] *Id.* at 398-399.

[94] *Spouses Sobrejuanite v. ASB Development Corporation*, 508 Phil. 715, 721 (2005) [Per *J.* Ynares-Santiago, First Division], citing *Finasia Investments and Finance Corp. v. Court of Appeals*, G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450-451 [Per *J.* Kapunan, First Division].

[95] *Id.*, citing *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 276-277 (1999) [Per *J.* Panganiban, Third Division].

[96] 508 Phil. 715 (2005) [Per *J.* Ynares-Santiago, First Division].

[97] *Id.* at 721, citing *BF Homes, Incorporated v. Court of Appeals*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262, 269 [Per *J.* Cruz, First Division].

As is evident from these discussions, however, the intention of "prevent[ing] a creditor from obtaining an advantage" is applicable in the context of an *ongoing* receivership. The prevention of a creditor's obtaining an advantage is not an end in itself but further serves the purpose of "giv[ing] enough breathing space for the . . . rehabilitation receiver." Thus, it applies only to corporations *under* receivership. Plainly, it does not apply to corporations who have sought to put themselves under receivership but, for lack of judicial sanction, have not been put under or are *no longer* under receivership.

The trial court's October 1, 2003 Order denied due course to and dismissed La Savoie's Petition for Rehabilitation. It superseded the trial court's June 4, 2003 Stay Order appointing Rito C. Manzana as rehabilitation receiver and thereby relieving him of his duties and removing La Savoie from receivership.

Apart from these, the trial court's October 1, 2003 Order lifted the June 4, 2003 Stay Order. This was significant not only with respect to the freedom it afforded to La Savoie's creditors to (in the meantime that the lifting of the Stay Order was not restrained) enforce their claims *but similarly because it established a context that removed this case from the strict applicability of the rule being cited by La Savoie.*

The portions cited by La Savoie in *Araneta* and *Alemar's Sibal & Sons* referred to a specific context:

> It must be stressed that ***the SEC had earlier ordered the suspension of all actions*** for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.[98] (Emphasis supplied)

The pronouncements in *Araneta* and *Alemar's Sibal & Sons* thus pertained to instances in which *there was an* ***outstanding*** *order suspending the enforcement of creditors' claims*. Here,

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[98] *Araneta v. Court of Appeals,* G.R. No. 95253, July 10, 1992, 211 SCRA 390, 398-399 [Per *J.* Nocon, Second Division].

the Stay Order was lifted, and its lifting was not enjoined or otherwise restrained. There was thus no Stay Order to speak of in those critical intervening moments when Home Guaranty Corporation acted pursuant to the guaranty call and paid the holders of the LSDC certificates.

If, following this payment *and* while La Savoie remained to be *not* under receivership, a valid transfer of the properties comprising the Asset Pool was made in favor of Home Guaranty Corporation, the properties would then no longer be under the dominion of La Savoie. They would thus be beyond the reach of rehabilitation proceedings and no longer susceptible to the rule against preference of creditors. However, we find that the transfer made to Home Guaranty Corporation was ineffectual.

Viewed solely through the lens of the Trust Agreement and the Contract of Guaranty, the transfer made to Home Guaranty Corporation on the strength of the Deed of Conveyance appears valid and binding. However, we find that its execution is in violation of a fundamental principle in the law governing credit transactions. We find the execution of a Deed of Conveyance without resorting to foreclosure to be indicative of *pactum commissorium*. Hence, it is void and ineffectual and does not serve to vest ownership in Home Guaranty Corporation.

Articles 2088 and 2137 of the Civil Code provide:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

Art. 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt or the sale of the real property. In this case, the Rules of Court on the foreclosure of mortgages shall apply.

In *Garcia v. Villar*,[99] this court discussed the elements of *pactum commissorium*:

[99] G.R. No. 158891, June 27, 2012, 675 SCRA 80 [Per *J.* Leonardo-De Castro, First Division].

The following are the elements of *pactum commissorium*:

(1) There should be a property mortgaged by way of security for the payment of the principal obligation; and

(2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.[100]

Nakpil v. Intermediate Appellate Court[101] discussed a similar situation where there was automatic appropriation on account of failure to pay:

> The arrangement entered into between the parties, whereby Pulong Maulap was to be "considered sold to him (respondent) . . . in case petitioner fails to reimburse Valdes, must then be construed as tantamount to a pactum commissorium which is expressly prohibited by Art. 2088 of the Civil Code. For, there was to be automatic appropriation of the property by Valdes in the event of failure of petitioner to pay the value of the advances. Thus, contrary to respondent's manifestations, all the elements of a pactum commissorium were present: there was a creditor-debtor relationship between the parties; the property was used as security for the loan; and, there was automatic appropriation by respondent of Pulong Maulap in case of default of petitioner.[102]

In this case, Sections 13.1 and 13.2 of the Contract of Guaranty call for the "prompt assignment and conveyance to [Home Guaranty Corporation] of all the corresponding properties in the Asset Pool" that are held as security in favor of the guarantor. Moreover, Sections 13.1 and 13.2 dispense with the need of conducting foreclosure proceedings, judicial or otherwise. Albeit requiring the intervention of the trustee of the Asset Pool, Sections 13.1 and 13.2 spell out what is, for all intents and purposes, the automatic appropriation by the paying guarantor of the

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[100] Id. at 90-91, citing *Development Bank of the Philippines v. Court of Appeals*, 348 Phil. 15, 31 (1998) [Per *J.* Davide, Jr., First Division].

[101] G.R. No. 74449, August 20, 1993, 225 SCRA 456 [Per *J.* Bellosillo, First Division].

[102] *Id.* at 467-468.

properties held as security. This is thus a clear case of *pactum commissorium*. It is null and void. Accordingly, whatever conveyance was made by Planters Development Bank to Home Guaranty Corporation in view of this illicit stipulation is ineffectual. It did not vest ownership in Home Guaranty Corporation.

All that this transfer engendered is a constructive trust in which the properties comprising the Asset Pool are held in trust by Home Guaranty Corporation, as trustee, for the trustor, La Savoie.

Buan Vda. De Esconde v. Court of Appeals[103] exhaustively discussed the concept of a trust and its classification into express and implied trusts, as well as resulting and constructive trusts:

> Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. Trusts are either express or implied. An express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.
>
> On the other hand, implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:
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>> Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, *constructive trusts are created*

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[103] 323 Phil. 81 (1996) [Per *J*. Romero, Second Division].

> *by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.*[104] (Emphasis supplied)

Articles 1450, 1454, 1455, and 1456 of the Civil Code provide examples of constructive trusts:

Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

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[104] *Id*. at 88-89, *citing* IV ARTURO TOLENTINO, *CIVIL CODE OF THE PHILIPPINES,* 669 (1991), *citing* 54 Am. Jur. 21; *Sotto v. Teves*, 175 Phil. 343 (1978) [Per *J*. Guerrero, First Division], *citing Cuaycong, et al. v. Cuaycong, et al.*, 129 Phil. 439 (1967) [Per *J*. Bengzon, J.P., *En Banc*]; CIVIL CODE, ART. 1443; *Heirs of Maria de la Cruz y Gutierrez v. Court of Appeals*, 261 Phil. 771 [Per *J*. Paras, Second Division], citing *Vda. de Mapa v. Court of Appeals*, G.R. No. L-38972, September 28, 1987, 154 SCRA 294, 300 [Per *J*. Fernan, Third Division]; *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, January 21, 1993, 217 SCRA 347, 358 [Per *J*. Romero, Third Division]; and *O'Laco v. Co Cho Chit*, G.R. No. 58010, March 31, 1993, 220 SCRA 656, 663 [Per *J*. Bellosillo, First Division].

In *Rodrigo v. Arcilla*,[105] this court held that a constructive trust was created when petitioners' predecessor-in-interest, Vicente Sauza, got respondent's parents, Ramon Daomilas and Lucia Nagac, "to sign a document which he represented to them as a deed 'evidencing their status as adjoining landowners' but was actually a document disclaiming their ownership over [the subject lot] and transferring the same to [Sauza]."[106]

In *Lopez v. Court of Appeals*,[107] properties intended to be for the benefit of "a trust fund for [the testatrix's] paraphernal properties, denominated as *Fideicomiso de Juliana Lopez Manzano (Fideicomiso)*,"[108] were mistakenly adjudicated by a probate court in favor of respondents' predecessor-in-interest, Jose Lopez Manzano. These properties were then registered by him, and transfer certificates of title were issued in his name. This court held that "[t]he apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso*."[109]

In *Lopez*, this court held that the factual milieu of that case placed it within the contemplation of Article 1456 of the Civil Code:

> The provision on implied trust governing the factual milieu of this case is provided in Article 1456 of the Civil Code, which states:
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> > ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.
>
> . . . .
>
> The disputed properties were excluded from the *Fideicomiso* at the outset. Jose registered the disputed properties in his name partly

[105] 525 Phil. 590 (2006) [Per *J*. Corona, Second Division].

[106] *Id*. at 593.

[107] 594 Phil. 436 (2008) [Per *J*. Tinga, Second Division].

[108] *Id*. at 439.

[109] *Id*. at 449.

as his conjugal share and partly as his inheritance from his wife Juliana, which is the complete reverse of the claim of the petitioner, as the new trustee, that the properties are intended for the beneficiaries of the *Fideicomiso*. Furthermore, the exclusion of the disputed properties from the *Fideicomiso* was approved by the probate court and, subsequently, by the trial court having jurisdiction over the *Fideicomiso*. The registration of the disputed properties in the name of Jose was actually pursuant to a court order. The apparent mistake in the adjudication of the disputed properties to Jose created a mere implied trust of the constructive variety in favor of the beneficiaries of the *Fideicomiso*.[110]

So, too, this case falls squarely under Article 1456 of the Civil Code. Home Guaranty Corporation acquired the properties comprising the Asset Pool by mistake or through the ineffectual transfer (*i.e.*, for being *pactum commissorium*) made by the original trustee, Planters Development Bank.

Two key points are established from the preceding discussions. First, the Court of Appeals' June 21, 2005 Decision restored La Savoie's status as a corporation under receivership. Second, with all but a constructive trust created between Home Guaranty Corporation and La Savoie, the properties comprising the Asset Pool remain within the dominion of La Savoie.

On the first point, the restoration of La Savoie's status as a corporation under receivership brings into operation the rule against preference of creditors. On the second point, La Savoie's continuing ownership entails the continuing competence of the court having jurisdiction over the rehabilitation proceedings to rule on how the properties comprising the Asset Pool shall be disposed, managed, or administered in order to satisfy La Savoie's obligations and/or effect its rehabilitation.

The cumulative effect of these is that Home Guaranty Corporation must submit itself, like La Savoie's other creditors, to how La Savoie's Petition for Rehabilitation shall be resolved. As a paying guarantor, Home Guaranty Corporation was subrogated into the rights of La Savoie's creditors and now

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[110] *Id.* at 446-449.

stands as the latter's own creditor. It remains so pending the satisfaction of La Savoie's obligation and as the void conveyance made to it by Planters Development Bank failed to terminate in the creditor-debtor relationship with La Savoie.

WHEREFORE, the Petition is **DENIED**. The Regional Trial Court, Branch 142, Makati City is directed to proceed with dispatch in resolving the Petition for Rehabilitation filed by respondent La Savoie Development Corporation.

SO ORDERED.

Del Castillo (Acting Chairperson), Velasco, Jr.,[*] *Mendoza,* and *Reyes,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 174184, January 28, 2015]

G.J.T. REBUILDERS MACHINE SHOP, GODOFREDO TRILLANA, and JULIANA TRILLANA, *petitioners, vs.* **RICARDO AMBOS, BENJAMIN PUTIAN, and RUSSELL AMBOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL DUE TO CESSATION OR CLOSURE OF BUSINESS; THE DECISION TO CLOSE ONE'S BUSINESS IS A

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[*] Designated as acting member per S.O. No. 1910 dated January 12, 2015.

[**] Designated additional member per Raffle dated January 26, 2015.

MANAGEMENT PREROGATIVE THAT THE COURTS CANNOT INTERFERE WITH, BUT THE EMPLOYER MUST PAY THE AFFECTED WORKERS SEPARATION PAY.— Article 283 of the Labor Code allows an employer to dismiss an employee due to the cessation of operation or closure of its establishment or undertaking x x x. The decision to close one's business is a management prerogative that courts cannot interfere with. Employers can "lawfully close shop at anytime," even for reasons of their own. "Just as no law forces anyone to go into business, no law can compel anybody to continue in it." In *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, this court said: It would indeed be stretching the intent and spirit of the law if [courts] were to unjustly interfere with the management's prerogative to close or cease its business operations just because [the] business operation or undertaking is not suffering from any loss or simply to provide the workers continued employment. However, despite this management prerogative, employers closing their businesses must pay the affected workers separation pay equivalent to one-month pay or to at least one-half-month pay for every year of service, whichever is higher. The reason is that an employee dismissed, even for an authorized cause, loses his or her means of livelihood.

2. ID.; ID.; ID.; ID.; EMPLOYER CANNOT BE COMPELLED TO PAY SEPARATION PAY WHEN THE CLOSURE OF THE ESTABLISHMENT IS DUE TO SERIOUS BUSINESS LOSSES OR FINANCIAL REVERSES BUT THE EMPLOYER MUST PROVE ITS SERIOUS BUSINESS LOSSES.— The only time employers are not compelled to pay separation pay is when they closed their establishments or undertaking due to serious business losses or financial reverses. Serious business losses are substantial losses, not *de minimis*. "Losses" means that the business must have operated at a loss for a period of time for the employer "to [have] perceived objectively and in good faith" that the business' financial standing is unlikely to improve in the future. The burden of proving serious business losses is with the employer. The employer must show losses on the basis of financial statements covering a sufficient period of time. The period covered must be sufficient for the National Labor Relations Commission and this court to appreciate the nature and vagaries of the business.

x x x. We uphold G.J.T. Rebuilders' decision to close its establishment as a valid exercise of its management prerogative. G.J.T. Rebuilders closed its machine shop, believing that its "former customers . . . seriously doubted [its] capacity . . . to perform the same quality [of service]" after the fire had partially damaged the building where it was renting space. Nevertheless, we find that G.J.T. Rebuilders failed to sufficiently prove its alleged serious business losses.

3. **ID.; ID.; ID.; DISMISSAL DUE TO CESSATION OR CLOSURE OF BUSINESS, NOTICE REQUIREMENT; FAILURE TO COMPLY WITH THE NOTICE REQUIREMENT RENDERS THE EMPLOYER LIABLE FOR NOMINAL DAMAGES.—** Aside from the obligation to pay separation pay, employers must comply with the notice requirement under Article 283 of the Labor Code. Employers must serve a written notice on the affected employees and on the Department of Labor and Employment at least one month before the intended date of closure. Failure to comply with this requirement renders the employer liable for nominal damages. x x x. In addition to separation pay, G.J.T. Rebuilders must pay each of the respondents nominal damages for failure to comply with the notice requirement under Article 283 of the Labor Code. Notice of the eventual closure of establishment is a "personal right of the employee to be personally informed of his [or her] proposed dismissal as well as the reasons therefor." The reason for this requirement is to "give the employee some time to prepare for the eventual loss of his [or her] job." The requirement "is not a mere technicality or formality which the employer may dispense with." Should employers fail to properly notify their employees, they shall be liable for nominal damages even if they validly closed their businesses.

4. **ID.; ID.; ID.; ID.; ID.; AMOUNT OF NOMINAL DAMAGES TO BE PAID BY THE EMPLOYER FOR NON-COMPLIANCE WITH THE NOTICE REQUIREMENT IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT; FACTORS TO CONSIDER.—** Generally, employers that validly closed their businesses but failed to comply with the notice requirement are liable in the amount of ₱50,000.00. This amount of nominal damages, however, may be reduced depending on "the sound discretion of the court." In *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees*

Union-OLALIA, we said that: [i]n the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked . . .; (2) the number of employees to be awarded; (3) the capacity of the employers to 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 bona fide attempt to comply with the notice requirements as opposed to giving no notice at all.

5. ID.; ID.; ID.; ID.; ID.; CONFERRING WITH THE EMPLOYEES OF THE INTENTION TO CEASE BUSINESS OPERATIONS IS NOT COMPLIANT WITH THE NOTICE REQUIREMENT FOR THE LAW REQUIRES A WRITTEN NOTICE OF CLOSURE SERVED ON THE AFFECTED EMPLOYEES.— G.J.T. Rebuilders allegedly "conferred with all [of its employees] of [its] intention to cease business operations" one month before closing its business. It allegedly submitted an Affidavit of Closure to the Department of Labor and Employment on February 16, 1998. "Conferring with employees" is not the notice required under Article 283 of the Labor Code. The law requires a *written* notice of closure served on the affected employees. As to when the written notice should be served on the Department of Labor and Employment, the law requires that it be served at least one month *before* the intended date of closure. G.J.T. Rebuilders served the written notice on the Department of Labor and Employment on February 16, 1998, two months *after* it had closed its business on December 15, 1997.

6. ID.; ID.; ID.; ATTORNEY'S FEES WHEN MAY BE AWARDED IN LABOR CASES.— Attorney's fees "represent the reasonable compensation [a client pays his or her lawyer] [for legal service rendered]." The award of attorney's fees is the exception rather than the rule. Specifically in labor cases, attorney's fees are awarded only when there is unlawful withholding of wages or when the attorney's fees arise from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties. For courts and tribunals to properly award attorney's fees, they must make "an express finding of fact and [citation] of applicable

law" in their decisions. In the present case, there is no unlawful withholding of wages or an award of attorney's fees arising from collective bargaining negotiations. Neither did the Labor Arbiter nor the Court of Appeals make findings of fact or cite the applicable law in awarding attorney's fees. That respondents were "constrained to engage the services of counsel to prosecute their claims" is not enough justification since "no premium should be placed on the right to litigate." For these reasons, we delete the award of attorney's fees.

APPEARANCES OF COUNSEL

Reynaldo I. Libanan for respondents.

D E C I S I O N

LEONEN, *J.*:

To prove serious business losses, employers must present in evidence financial statements showing the net losses suffered by the business within a sufficient period of time. Generally, it cannot be based on a single financial statement showing losses. Absent this proof, employers closing their businesses must pay the dismissed employees separation pay equivalent to one-month pay or to at least one-half-month pay for every year of service, whichever is higher.

This is a Petition for Review on *Certiorari*[1] of the Court of Appeals' Decision,[2] granting Ricardo Ambos, Russell Ambos,[3] and Benjamin Putian's Petition for *Certiorari*. The Court of Appeals found that G.J.T. Rebuilders Machine Shop (G.J.T. Rebuilders) failed to prove its alleged serious business losses. Thus, when it closed its establishment on December 15, 1997,

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[1] *Rollo,* pp. 3-15.

[2] *Id.* at 18-24. The Decision dated January 17, 2006 was penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Mario L. Guariña and Santiago Javier Ranada of the Fifth Division.

[3] Russell Ambos was also referred to as "Ruzell Ambos." See *rollo,* pp. 18, 36, and 44.

G.J.T. Rebuilders should have paid the affected employees separation pay.[4]

G.J.T. Rebuilders is a single proprietorship owned by the Spouses Godofredo and Juliana Trillana (Trillana spouses). It was engaged in steel works and metal fabrication, employing Ricardo Ambos (Ricardo), Russell Ambos (Russell), and Benjamin Putian (Benjamin) as machinists.[5]

G.J.T. Rebuilders rented space in the Far East Asia (FEA) Building in Shaw Boulevard, Mandaluyong City, which served as the site of its machine shop. On September 8, 1996, a fire partially destroyed the FEA Building.[6]

Due to the damage sustained by the building, its owner notified its tenants to vacate their rented units by the end of September 1996 "to avoid any unforeseen accidents which may arise due to the damage."[7]

Despite the building owner's notice to vacate, G.J.T. Rebuilders continued its business in the condemned building. When the building owner finally refused to accommodate it, G.J.T. Rebuilders left its rented space and closed the machine shop on December 15, 1997.[8] It then filed an Affidavit of Closure before the Department of Labor and Employment on February 16, 1998 and a sworn application to retire its business operations before the Mandaluyong City Treasurer's Office on February 25, 1998.[9]

Having lost their employment without receiving separation pay, Ricardo, Russell, and Benjamin filed a Complaint for illegal dismissal before the Labor Arbiter. They prayed for payment of allowance, separation pay, and attorney's fees.[10]

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[4] *Rollo*, pp. 21-22.

[5] *Id*. at 19.

[6] *Id*. at 29.

[7] *Id*.

[8] *Id*. at 8 and 19.

[9] *Id*. at 5-6 and 20.

[10] *Id*. at 19.

In their defense, G.J.T. Rebuilders and the Trillana spouses argued that G.J.T. Rebuilders suffered serious business losses and financial reverses, forcing it to close its machine shop. Therefore, Ricardo, Russell, and Benjamin were not entitled to separation pay.[11]

Labor Arbiter Facundo L. Leda (Labor Arbiter Leda) decided the Complaint, finding no convincing proof of G.J.T. Rebuilders' alleged serious business losses. Labor Arbiter Leda, in the Decision[12] dated December 28, 1999, found that Ricardo, Russell, and Benjamin were entitled to separation pay under Article 283 of the Labor Code.[13] In addition, they were awarded attorney's fees, having been constrained to litigate their claims.[14]

Even assuming that G.J.T. Rebuilders' closure was due to serious business losses, Labor Arbiter Leda held that the employees affected were still entitled to separation pay "based on social justice and equity."[15]

G.J.T. Rebuilders and the Trillana spouses appealed Labor Arbiter Leda's Decision before the National Labor Relations Commission.[16]

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

[12] *Id*. at 36-43.

[13] *Id*. at 39-40. This Article was renumbered to Article 297 by Rep. Act No. 10151, otherwise known as An Act Allowing the Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, Otherwise Known as the Labor Code of the Philippines; *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. No. 173154, December 9, 2013, 711 SCRA 618, 624 [Per *J*. Perlas-Bernabe, Second Division].

[14] *Id*. at 41-42.

[15] *Id*. at 40, citing *Banco Filipino Savings and Mortgage Bank v. National Labor Relations Commission,* 266 Phil. 770, 780 (1990) [Per *J*. Medialdea, First Division] and *International Hardware, Inc. v. National Labor Relations Commission (Third Division)*, 257 Phil. 261 (1989) [Per *J*. Gancayco, First Division].

[16] *Id*. at 44.

In contrast with the Labor Arbiter's finding, the National Labor Relations Commission found G.J.T. Rebuilders to have suffered serious business losses. Because of the fire that destroyed the building where G.J.T. Rebuilders was renting space, the demand for its services allegedly declined as "no same customer would dare to entrust machine works to be done for them in a machine shop lying in a ruined and condemned building."[17] The National Labor Relations Commission then concluded that the fire "proximately caused"[18] G.J.T. Rebuilders' serious business losses, with its financial statement for the fiscal year 1997 showing a net loss of ₱316,210.00.[19]

In the Decision[20] dated January 25, 2001, the National Labor Relations Commission vacated and set aside Labor Arbiter Leda's Decision and dismissed the Complaint for lack of merit. Since the Commission found that G.J.T. Rebuilders ceased operations due to serious business losses, it held that G.J.T. Rebuilders and the Trillana spouses need not pay Ricardo, Russell, and Benjamin separation pay.

Ricardo, Russell, and Benjamin filed a Motion for Reconsideration, which the National Labor Relations Commission denied in the Resolution[21] dated March 5, 2001.

Because of the alleged grave abuse of discretion of the National Labor Relations Commission, a Petition for *Certiorari* was filed before the Court of Appeals.[22]

The Court of Appeals reversed the National Labor Relations Commission's Decision, agreeing with Labor Arbiter Leda that G.J.T. Rebuilders failed to prove its alleged serious business losses. The Court of Appeals conceded that G.J.T. Rebuilders

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[17] *Id*. at 50.

[18] *Id*.

[19] *Id*. at 72.

[20] *Id*. at 41-53.

[21] *Id*. at 54-55.

[22] *Id*. at 18 and 21.

had to close the machine shop for reasons connected with the fire that partially destroyed the building where it was renting space. Nevertheless, G.J.T. Rebuilders continued its business for more than one year after the fire. Thus, according to the Court of Appeals, G.J.T. Rebuilders did not suffer from serious business losses but closed the machine shop to prevent losses.[23]

With respect to G.J.T. Rebuilders' financial statement showing an alleged net loss in 1997, the Court of Appeals refused to admit it in evidence since it was not subscribed under oath by the Certified Public Accountant who prepared it. According to the Court of Appeals, the financial statement was subscribed under oath only after G.J.T. Rebuilders had submitted it to Labor Arbiter Leda as an annex to its Motion to re-open proceedings and to submit additional evidence. Thus, the Court of Appeals gave G.J.T. Rebuilders' financial statement "scant consideration."[24]

In the Decision[25] dated January 17, 2006, the Court of Appeals granted the Petition for *Certiorari*, vacating and setting aside the National Labor Relations Commission's Decision. It reinstated Labor Arbiter Leda's Decision dated December 28, 1999.

G.J.T. Rebuilders and the Trillana spouses filed a Motion for Reconsideration, which the Court of Appeals denied in the Resolution[26] dated August 11, 2006.

Petitioners G.J.T. Rebuilders and the Trillana spouses filed before this court a Petition for Review on *Certiorari*.[27] Respondents Ricardo, Russell, and Benjamin commented[28] on the Petition, after which petitioners filed a Reply.[29]

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[23] *Id*. at 21-22.

[24] *Id*. at 22.

[25] *Id*. at 18-24.

[26] *Id*. at 26-28.

[27] *Id*. at 3-16.

[28] *Id*. at 60-66.

[29] *Id*. at 70-76.

In their Petition for Review on *Certiorari*, petitioners maintain that G.J.T. Rebuilders suffered serious business losses as evidenced by its financial statement covering the years 1996 and 1997. Petitioners admit that the financial statement was belatedly subscribed under oath.[30] Nevertheless, "the credibility or veracity of the entries"[31] in the financial statement was not affected since the Bureau of Internal Revenue received the same unsubscribed financial statement when G.J.T. Rebuilders allegedly filed its income tax return on April 15, 1998.[32]

Considering that petitioners sufficiently proved G.J.T. Rebuilders' serious business losses, petitioners argue that respondents are not entitled to separation pay.

As for respondents, they contend that G.J.T. Rebuilders failed to prove its alleged serious business losses. They argue that the financial statement showing a net loss for the year 1997 was not credible, having been belatedly subscribed under oath by the Certified Public Accountant who prepared it.[33]

With no credible proof of G.J.T. Rebuilders' supposed serious business losses, respondents argue that petitioners must pay them separation pay under Article 283 of the Labor Code.[34]

The issue for our resolution is whether petitioners sufficiently proved that G.J.T. Rebuilders suffered from serious business losses.

This petition should be denied.

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G.J.T. Rebuilders must pay respondents their separation pay for failure to prove its alleged serious business losses

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[30] *Id*. at 9.

[31] *Id*.

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

[33] *Id*. at 63-64.

[34] *Id*. at 63.

Article 283 of the Labor Code allows an employer to dismiss an employee due to the cessation of operation or closure of its establishment or undertaking, thus:

> **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 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 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 at least six (6) months shall be considered one (1) whole year.

The decision to close one's business is a management prerogative that courts cannot interfere with.[35] Employers can "lawfully close shop at anytime,"[36] even for reasons of their own. "Just as no law forces anyone to go into business, no law can compel anybody to continue in it."[37] In *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*,[38] this court said:

> It would indeed be stretching the intent and spirit of the law if [courts] were to unjustly interfere with the management's prerogative

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[35] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor Union-Super, et al.,* 585 Phil. 88, 101 (2008) [Per *J.* Austria-Martinez, Third Division].

[36] *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering,* 460 Phil. 583, 590 (2003) [Per *J.* Corona, Third Division].

[37] *Id.*

[38] 460 Phil. 583 (2003) [Per *J.* Corona, Third Division].

to close or cease its business operations just because [the] business operation or undertaking is not suffering from any loss or simply to provide the workers continued employment.[39]

However, despite this management prerogative, employers closing their businesses must pay the affected workers separation pay equivalent to one-month pay or to at least one-half-month pay for every year of service, whichever is higher.[40] The reason is that an employee dismissed, even for an authorized cause, loses his or her means of livelihood.[41]

The only time employers are not compelled to pay separation pay is when they closed their establishments or undertaking due to serious business losses or financial reverses.[42]

Serious business losses are substantial losses, not *de minimis*.[43] "Losses" means that the business must have operated at a loss for a period of time for the employer "to [have] perceived objectively and in good faith"[44] that the business' financial standing is unlikely to improve in the future.

The burden of proving serious business losses is with the employer.[45] The employer must show losses on the basis of financial statements covering a sufficient period of time. The

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[39] *Id*. at 590.

[40] LABOR CODE, art. 283, now renumbered to ART. 297 by Rep. Act No. 10151.

[41] *Indino v. NLRC (Second Division),* 258 Phil. 792, 800 (1989) [Per *J*. Sarmiento, Second Division].

[42] *Lopez Sugar Corporation v. Federation of Free Workers,* G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186 [Per *J*. Feliciano, Third Division].

[43] *Philippine Tobacco Flue-Curing & Redrying Corp. v. NLRC,* 360 Phil. 218, 236 (1998) [Per *J*. Panganiban, First Division], citing *Somerville Stainless Steel Corporation v. NLRC,* 350 Phil. 859, 869 (1998) [Per *J*. Panganiban, First Division].

[44] *Id*. at 236-237, citing *Somerville Stainless Steel Corporation v. NLRC,* 350 Phil. 859, 870 (1998) [Per *J*. Panganiban, First Division].

[45] *Reahs Corporation v. NLRC,* 337 Phil. 698, 705 (1997) [Per *J*. Padilla, First Division].

period covered must be sufficient for the National Labor Relations Commission and this court to appreciate the nature and vagaries of the business.

In *North Davao Mining Corporation v. NLRC*,[46] North Davao Mining Corporation presented in evidence financial statements showing a continuing pattern of loss from 1988 until its closure in 1992. The company suffered net losses averaging ₱3 billion a year, with an aggregate loss of ₱20 billion by the time of its closure.[47] This court found that North Davao suffered serious business losses.[48]

In *Manatad v. Philippine Telegraph and Telephone Corporation*,[49] the Philippine Telegraph and Telephone Corporation presented in evidence financial statements showing a continuing pattern of loss from 1995 to 1999.[50] By 2000, the corporation suffered an aggregate loss of ₱2.169 billion, constraining it to retrench some of its employees. This court held that the Philippine Telegraph and Telephone Corporation was "fully justified in implementing a retrenchment program since it was undergoing business reverses, not only for a single fiscal year, but for several years prior to and even after the program."[51]

In *LVN Pictures Employees and Workers Association (NLU) v. LVN Pictures, Inc.*,[52] a case G.J.T. Rebuilders cited, LVN Pictures, Inc. presented in evidence financial statements showing a continuing pattern of loss from 1957 to 1961. By the time the corporation closed its business, it had suffered an aggregate

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[46] 325 Phil. 202 (1996) [Per *J.* Panganiban, *En Banc*].

[47] *Id*. at 205.

[48] *Id*. at 212.

[49] 571 Phil. 494 (2008) [Per *J.* Chico-Nazario, Third Division].

[50] *Id*. at 501.

[51] *Id*. at 509.

[52] 146 Phil. 153 (1970) [Per *J.* Ruiz Castro, En Banc].

loss of ₱1,560,985.14.[53] This court found that LVN Pictures, Inc. suffered serious business losses.[54]

Aside from the obligation to pay separation pay, employers must comply with the notice requirement under Article 283 of the Labor Code. Employers must serve a written notice on the affected employees and on the Department of Labor and Employment at least one month before the intended date of closure. Failure to comply with this requirement renders the employer liable for nominal damages.[55]

We uphold G.J.T. Rebuilders' decision to close its establishment as a valid exercise of its management prerogative. G.J.T. Rebuilders closed its machine shop, believing that its "former customers . . . seriously doubted [its] capacity . . . to perform the same quality [of service]"[56] after the fire had partially damaged the building where it was renting space.

Nevertheless, we find that G.J.T. Rebuilders failed to sufficiently prove its alleged serious business losses.

The financial statement G.J.T. Rebuilders submitted in evidence covers the fiscal years 1996 and 1997. Based on the financial statement, G.J.T. Rebuilders earned a net income of ₱61,157.00 in 1996 and incurred a net loss of ₱316,210.00 in 1997.[57]

We find the two-year period covered by the financial statement insufficient for G.J.T. Rebuilders to have objectively perceived that the business would not recover from the loss. Unlike in *North Davao Mining Corporation*, *Manatad,* and *LVN Pictures Employees and Workers Association (NLU),* no continuing pattern of loss within a sufficient period of time is present in this case.

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[53] *Id.* at 157.

[54] *Id.* at 157 and 166.

[55] *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. No. 173154, December 9, 2013, 711 SCRA 618, 627-629 [Per *J.* Perlas-Bernabe, Second Division].

[56] *Rollo,* p. 13.

[57] *Id.* at 35.

In fact, in one of the two fiscal years covered by the financial statement presented in evidence, G.J.T. Rebuilders earned a net income. We, therefore, agree with the Labor Arbiter and the Court of Appeals that G.J.T. Rebuilders closed its machine shop to prevent losses, not because of serious business losses.[58]

Considering that G.J.T. Rebuilders failed to prove its alleged serious business losses, it must pay respondents their separation pay equivalent to one-month pay or at least one-half-month pay for every year of service, whichever is higher. In computing the period of service, a fraction of at least six months is considered a year.[59]

Ricardo began working as a machinist on February 9, 1978.[60] Since he last worked for G.J.T. Rebuilders on December 15, 1997, he worked a total of 19 years, 10 months, and six days. This period is rounded off to 20 years, with the last 10 months and six days being considered a year.[61]

Ricardo had a daily salary of ₱230.00 and worked 13 days a month.[62] His one-month pay, therefore, is equal to ₱2,990.00. On the other hand, his one-half-month pay for every year of service is equal to ₱29,250.00. The latter amount being higher, Ricardo must receive ₱29,250.00 as separation pay.

With respect to Russell, he began his employment on September 1, 1992.[63] Since he last worked for G.J.T. Rebuilders on December 15, 1997, he worked a total of five years, three months, and 14 days. This period is rounded off to five years, not six years, since the last three months and 14 days are less than the six months required to be considered a year.[64]

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[58] *Id.* at 21-22 and 40.

[59] LABOR CODE, ART. 283, now renumbered to Art. 297 by Rep. Act No. 10151.

[60] *Rollo,* p. 42.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

Russell had a daily salary of ₱225.00 and worked 13 days a month.[65] His one-month pay, therefore, is equal to ₱2,925.00. On the other hand, his one-half-month pay for every year of service is equal to ₱7,312.50. The latter amount being higher, Russell must receive ₱7,312.50 as separation pay.

As for Benjamin, he began working as a machinist on February 1, 1994.[66] Since he last worked for G.J.T. Rebuilders on December 15, 1997, he worked a total of three years, 10 months, and 14 days. This period is rounded off to four years, with the last 10 months and 14 days being considered a year.[67]

Benjamin had a daily salary of ₱225.00 and worked 13 days a month.[68] His one-month pay, therefore, is equal to ₱2,925.00. On the other hand, his one-half-month pay for every year of service is equal to ₱5,850.00. The latter amount being higher, Benjamin must receive ₱5,850.00 as separation pay.

II

G.J.T. Rebuilders must pay respondents nominal damages for failure to comply with the procedural requirements for closing its business

In addition to separation pay, G.J.T. Rebuilders must pay each of the respondents nominal damages for failure to comply with the notice requirement under Article 283 of the Labor Code.

Notice of the eventual closure of establishment is a "personal right of the employee to be personally informed of his [or her] proposed dismissal as well as the reasons therefor."[69] The reason

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[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. No. 173154, December 9, 2013, 711 SCRA 618, 627 [Per *J.* Perlas-Bernabe, Second Division].

for this requirement is to "give the employee some time to prepare for the eventual loss of his [or her] job."[70]

The requirement "is not a mere technicality or formality which the employer may dispense with."[71] Should employers fail to properly notify their employees, they shall be liable for nominal damages even if they validly closed their businesses.[72]

Generally, employers that validly closed their businesses but failed to comply with the notice requirement are liable in the amount of ₱50,000.00.[73] This amount of nominal damages, however, may be reduced depending on "the sound discretion of the court."[74] In *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-OLALIA*,[75] we said that:

> [i]n the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked . . .; (2) the number of employees to be awarded; (3) the capacity of the employers to 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 bona fide attempt to comply with the notice requirements as opposed to giving no notice at all.[76]

G.J.T. Rebuilders allegedly "conferred with all [of its employees] of [its] intention to cease business operations"[77] one month

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[70] *Id*.

[71] *Id*.

[72] *Id*. at 628.

[73] *Id*. at 629, citing *Abbott Laboratories, Philippines v. Alcaraz,* G.R. No. 192571, July 23, 2013, 701 SCRA 682, 715 [Per *J*. Perlas-Bernabe, *En Banc*].

[74] *Id*.

[75] G.R. No. 173154, December 9, 2013, 711 SCRA 618 [Per *J.* Perlas-Bernabe, Second Division].

[76] *Id*. at 629, citing *Industrial Timber Corporation v. Ababon*, 520 Phil. 522, 527-528 [Per *J*. Ynares-Santiago, First Division].

[77] *Rollo,* p. 5.

before closing its business. It allegedly submitted an Affidavit of Closure to the Department of Labor and Employment on February 16, 1998.[78]

"Conferring with employees" is not the notice required under Article 283 of the Labor Code. The law requires a *written* notice of closure served on the affected employees. As to when the written notice should be served on the Department of Labor and Employment, the law requires that it be served at least one month *before* the intended date of closure. G.J.T. Rebuilders served the written notice on the Department of Labor and Employment on February 16, 1998, two months *after* it had closed its business on December 15, 1997.

With G.J.T. Rebuilders failing to comply with the notice requirement under Article 283 of the Labor Code, we find that it deprived respondents of due process. However, considering that G.J.T. Rebuilders attempted to comply with the notice requirement, we find the nominal damages of ₱10,000.00 for each of the respondents sufficient.[79]

III

Respondents are not entitled to attorney's fees

Attorney's fees "represent the reasonable compensation [a client pays his or her lawyer] [for legal service rendered]."[80] The award of attorney's fees is the exception rather than the rule.[81] Specifically in labor cases, attorney's fees are awarded

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[78] *Id*. at 5 and 30.

[79] *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. No. 173154, December 9, 2013, 711 SCRA 618, 630 [Per *J*. Perlas-Bernabe, Second Division].

[80] *Lui Enterprises, Inc. v. Zuellig Pharma Corporation,* G.R. No. 193494, March 12, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/193494.pdf> 26 [Per *J*. Leonen, Third Division].

[81] *Id*.

only when there is unlawful withholding of wages[82] or when the attorney's fees arise from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties.[83] For courts and tribunals to properly award attorney's fees, they must make "an express finding of fact and [citation] of applicable law"[84] in their decisions.

In the present case, there is no unlawful withholding of wages or an award of attorney's fees arising from collective bargaining negotiations. Neither did the Labor Arbiter nor the Court of Appeals make findings of fact or cite the applicable law in awarding attorney's fees. That respondents were "constrained to engage the services of counsel to prosecute their claims"[85] is not enough justification since "no premium should be placed on the right to litigate."[86]

For these reasons, we delete the award of attorney's fees.

All told, G.J.T. Rebuilders failed to prove that it closed its machine shop due to serious business losses. Moreover, it failed

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[82] LABOR CODE, ART. 111(1) provides:

Art. 111. *Attorney's fees*. – (1) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered; *Reahs Corporation v. NLRC*, 337 Phil. 698, 709 (1997) [Per *J*. Padilla, First Division].

[83] LABOR CODE, Art. 222(2) provides:

Art. 222. *Appearances and Fees*. - . . . .

(2) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining agreement shall be imposed on any individual member of the contracting union: *Provided, however,* That attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void; *Reahs Corporation v. NLRC,* 337 Phil. 698, 709 (1997) [Per *J*. Padilla, First Division].

[84] *Reahs Corporation v. NLRC,* 337 Phil. 698, 709 (1997) [Per *J*. Padilla, First Division].

[85] *Rollo,* p. 42.

[86] *Lui Enterprises, Inc. v. Zuellig Pharma Corporation,* G.R. No. 193494, March 12, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/193494.pdf> 27 [Per *J*. Leonen, Third Division].

to comply with Article 283 of the Labor Code on the notice requirement. Therefore, petitioners must pay respondents Ricardo Ambos, Russell Ambos, and Benjamin Putian separation pay and nominal damages.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Court of Appeals' Decision dated January 17, 2006 is **AFFIRMED with MODIFICATION**.

Petitioners are ordered to **PAY** respondents their separation pay with 6% legal interest[87] from the finality of this Decision until full payment:

Ricardo Ambos	₱29,250.00
Russell Ambos	₱ 7,312.50
Benjamin Putian	₱ 5,850.00.

Furthermore, petitioners shall **PAY** each of the respondents ₱10,000.00 as nominal damages with 6% legal interest[88] from the finality of this Decision until full payment.

The award of attorney's fees is **DELETED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *del Castillo,* and *Mendoza, JJ.,* concur.

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[87] *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per *J.* Peralta, *En Banc*].

[88] *Id.*

[*] Designated acting member per S.O. No. 1910 dated January 12, 2015.

THIRD DIVISION

[G.R. No. 187226. January 28, 2015]

CHERYLL SANTOS LEUS, *petitioner, vs.* **ST. SCHOLASTICA'S COLLEGE WESTGROVE and/or SR. EDNA QUIAMBAO, OSB,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; POINTS OF LAW, THEORIES, ISSUES, AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT OUGHT NOT TO BE CONSIDERED BY A REVIEWING COURT, AS THESE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—**The Court notes that the argument against the validity of the 1992 MRPS, specifically Section 94 thereof, is raised by the petitioner for the first time in the instant petition for review. Nowhere in the proceedings before the LA, the NLRC or the CA did the petitioner assail the validity of the provisions of the 1992 MRPS. "It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process."

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE PROVISIONS OF THE 1992 MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS (MRPS) PROVIDING FOR THE CAUSES OF TERMINATING THE EMPLOYMENT OF THE TEACHING AND NON-TEACHING PERSONNEL OF PRIVATE SCHOOLS ARE VALID.—** The 1992 MRPS, the regulation in force at the time of the instant controversy, was issued by the Secretary of Education pursuant to BP 232. Section 70 of BP 232 vests the Secretary of Education with the authority to issue rules and regulations to implement the

provisions of BP 232. Concomitantly, Section 57 specifically empowers the Department of Education to promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with the declared policy of BP 232. The qualifications of teaching and non-teaching personnel of private schools, as well as the causes for the termination of their employment, are an integral aspect of the educational system of private schools. Indubitably, ensuring that the teaching and non-teaching personnel of private schools are not only qualified, but competent and efficient as well goes hand in hand with the declared objective of BP 232 – establishing and maintaining relevant quality education. It is thus within the authority of the Secretary of Education to issue a rule, which provides for the dismissal of teaching and non-teaching personnel of private schools based on their incompetence, inefficiency, or some other disqualification. Moreover, Section 69 of BP 232 specifically authorizes the Secretary of Education to "prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations" for the "[g]ross inefficiency of the teaching or non-teaching personnel" of private schools. Accordingly, contrary to the petitioner's claim, the Court sees no reason to invalidate the provisions of the 1992 MRPS, specifically Section 94 thereof.

3. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; WHEN THERE IS A SHOWING THAT THE FINDINGS OR CONCLUSIONS, DRAWN FROM THE SAME PIECES OF EVIDENCE, WERE ARRIVED AT ARBITRARILY OR IN DISREGARD OF THE EVIDENCE ON RECORD, THE SAME MAY BE REVIEWED BY THE COURTS.—** In a petition for review under Rule 45 of the Rules of Court, such as the instant petition, where the CA's disposition in a labor case is sought to be calibrated, the Court's review is quite limited. In ruling for legal correctness, the Court has to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; the Court has 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. The

phrase "grave abuse of discretion" is well-defined in the Court's jurisprudence. It exists where an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The determination of the presence or absence of grave abuse of discretion does not include an inquiry into the correctness of the evaluation of evidence, which was the basis of the labor agency in reaching its conclusion. Nevertheless, while a *certiorari* proceeding does not strictly include an inquiry as to the correctness of the evaluation of evidence (that was the basis of the labor tribunals in determining their conclusion), the incorrectness of its evidentiary evaluation should not result in negating the requirement of substantial evidence. **Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts.**

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE ON GROUND OF DISGRACEFUL OR IMMORAL CONDUCT UNDER SECTION 94 (E) OF THE 1992 MRPS; THE EMPLOYEE'S PREGNANCY OUT OF WEDLOCK, WITHOUT MORE, IS NOT SUFFICIENT TO CHARACTERIZE HER CONDUCT AS DISGRACEFUL OR IMMORAL FOR THERE MUST BE SUBSTANTIAL EVIDENCE TO ESTABLISH THAT PRE-MARITAL SEXUAL RELATIONS AND, CONSEQUENTLY, PREGNANCY OUT OF WEDLOCK, ARE INDEED CONSIDERED DISGRACEFUL OR IMMORAL.—** The labor tribunals concluded that the petitioner's pregnancy out of wedlock, *per se*, is "disgraceful and immoral" considering that she is employed in a Catholic educational institution. In arriving at such conclusion, the labor tribunals merely assessed the fact of the petitioner's pregnancy *vis-à-vis* the totality of the circumstances surrounding the same. However, the Court finds no substantial evidence to support the aforementioned conclusion arrived at by the labor tribunals. The fact of the petitioner's pregnancy out of wedlock, without more, is not enough to characterize the petitioner's conduct as disgraceful or immoral. There must be substantial evidence to establish

that pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral.

5. ID.; ID.; ID.; ID.; TO DETERMINE WHETHER A CONDUCT IS DISGRACEFUL OR IMMORAL, A CONSIDERATION OF THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE CONDUCT MUST BE ASSESSED VIS-À-VIS THE PREVAILING NORMS OF CONDUCT.— In *Chua-Qua v. Clave*, the Court stressed that to constitute immorality, the circumstances of each particular case must be holistically considered and **evaluated in light of the prevailing norms of conduct** and applicable laws. Otherwise stated, it is not the totality of the circumstances surrounding the conduct *per se* that determines whether the same is disgraceful or immoral, but the conduct that is generally accepted by society as respectable or moral. If the conduct does not conform to what society generally views as respectable or moral, then the conduct is considered as disgraceful or immoral. Tersely put, substantial evidence must be presented, which would establish that a particular conduct, viewed in light of the prevailing norms of conduct, is considered disgraceful or immoral. Thus, the determination of whether a conduct is disgraceful or immoral involves a two-step process: *first*, a consideration of the totality of the circumstances surrounding the conduct; and *second*, an assessment of the said circumstances *vis-à-vis* the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable. That the petitioner was employed by a Catholic educational institution *per se* does not absolutely determine whether her pregnancy out of wedlock is disgraceful or immoral. There is still a necessity to determine whether the petitioner's pregnancy out of wedlock is considered disgraceful or immoral in accordance with the prevailing norms of conduct.

6. ID.; ID.; ID.; ID.; TO BE CONSIDERED AS DISGRACEFUL OR IMMORAL, THE CONDUCT MUST BE DETRIMENTAL OR DANGEROUS TO THOSE CONDITIONS UPON WHICH DEPEND THE EXISTENCE AND PROGRESS OF HUMAN SOCIETY AND NOT BECAUSE THE CONDUCT IS PROSCRIBED BY THE BELIEFS OF ONE RELIGION OR THE OTHER.— [W]hen the law speaks of immoral or, necessarily, disgraceful conduct, it pertains to public and secular morality; it refers to those

conducts which are proscribed because they are **detrimental to conditions upon which depend the existence and progress of human society**. x x x. **For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws.** At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority. x x x. [T]he right of an employee to security of tenure is protected by the Constitution. Perfunctorily, a regular employee may not be dismissed unless for cause provided under the Labor Code and other relevant laws, in this case, the 1992 MRPS. [W]hen the law refers to morality, it necessarily pertains to public and secular morality and not religious morality. Thus, the proscription against "disgraceful or immoral conduct" under Section 94(e) of the 1992 MRPS, which is made as a cause for dismissal, must necessarily refer to public and secular morality. Accordingly, in order for a conduct to be considered as disgraceful or immoral, it must be "'detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society' and not because the conduct is proscribed by the beliefs of one religion or the other."

7. ID.; ID.; ID.; ID.; ID.; PRE-MARITAL RELATIONS BETWEEN TWO CONSENTING ADULTS WHO HAVE NO IMPEDIMENT TO MARRY EACH OTHER, AND CONSEQUENTLY, CONCEIVING A CHILD OUT OF WEDLOCK, GAUGED FROM A PURELY PUBLIC AND SECULAR VIEW OF MORALITY, DOES NOT AMOUNT TO A DISGRACEFUL OR IMMORAL CONDUCT.— Admittedly, the petitioner is employed in an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students. That her indiscretion, which resulted in her pregnancy out of wedlock, is anathema to the doctrines of the Catholic Church. However, viewed against the prevailing norms of conduct, the petitioner's conduct cannot

be considered as disgraceful or immoral; such conduct is not denounced by public and secular morality. It may be an unusual arrangement, but it certainly is not disgraceful or immoral within the contemplation of the law. To stress, pre-marital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS.

8. ID.; ID.; ID.; ID.; IT IS INCUMBENT UPON THE EMPLOYER TO SHOW BY SUBSTANTIAL EVIDENCE THAT THE TERMINATION OF THE EMPLOYMENT OF THE EMPLOYEES WAS VALIDLY MADE, AND FAILURE TO DISCHARGE THAT DUTY WOULD MEAN THAT THE DISMISSAL IS NOT JUSTIFIED AND THEREFORE ILLEGAL.— The Court finds that SSCW failed to adduce substantial evidence to prove that the petitioner's indiscretion indeed caused grave scandal to SSCW and its students. Other than the SSCW's bare allegation, the records are bereft of any evidence that would convincingly prove that the petitioner's conduct indeed adversely affected SSCW's integrity in teaching the moral doctrines, which it stands for. The petitioner is only a non-teaching personnel; her interaction with SSCW's students is very limited. It is thus quite impossible that her pregnancy out of wedlock caused such a grave scandal, as claimed by SSCW, as to warrant her dismissal. Settled is the rule that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. "Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise." Indubitably, bare allegations do not amount to substantial evidence. Considering that the respondents failed to adduce substantial evidence to prove their asserted cause for the petitioner's dismissal, the labor tribunals should not have upheld their allegations hook, line and sinker.

The labor tribunals' respective findings, which were arrived at *sans* any substantial evidence, amounts to a grave abuse of discretion, which the CA should have rectified. "Security of tenure is a right which may not be denied on mere speculation of any unclear and nebulous basis."

9. ID.; ID.; MANAGEMENT PREROGATIVE; THE EXERCISE OF MANAGEMENT PREROGATIVE IS NOT ABSOLUTE AS IT MUST BE EXERCISED IN GOOD FAITH AND WITH DUE REGARD TO THE RIGHTS OF LABOR AND NOT IN A CRUEL, REPRESSIVE, OR DESPOTIC MANNER.— The Court has held that "management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor." Management cannot exercise its prerogative in a cruel, repressive, or despotic manner. SSCW, as employer, undeniably has the right to discipline its employees and, if need be, dismiss them if there is a valid cause to do so. However, as already explained, there is no cause to dismiss the petitioner. Her conduct is not considered by law as disgraceful or immoral. Further, the respondents themselves have admitted that SSCW, at the time of the controversy, does not have any policy or rule against an employee who engages in pre-marital sexual relations and conceives a child as a result thereof. There being no valid basis in law or even in SSCW's policy and rules, SSCW's dismissal of the petitioner is despotic and arbitrary and, thus, not a valid exercise of management prerogative.

10. ID.; ID.; TERMINATION OF EMPLOYMENT; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO FULL BACKWAGES AND SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHEN THE LATTER RECOURSE IS NO LONGER PRACTICAL OR IN THE BEST INTEREST OF THE PARTIES.— Under the law and prevailing jurisprudence, "an illegally dismissed employee is entitled to reinstatement as a matter of right." Aside from the instances provided under Articles 283 and 284 of the Labor Code,

separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties. x x x. In view of the particular circumstances of this case, it would be more prudent to direct SSCW to pay the petitioner separation pay in lieu of actual reinstatement. The continued employment of the petitioner with SSCW would only serve to intensify the atmosphere of antipathy and antagonism between the parties. Consequently, the Court awards separation pay to the petitioner equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of her illegal dismissal up to the finality of this judgment, as an alternative to reinstatement. Also, "employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision." Accordingly, the petitioner is entitled to an award of full backwages from the time she was illegally dismissed up to the finality of this decision.

11. **CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WHEN MAY BE AWARDED TO A DISMISSED EMPLOYEE.—** [T]he petitioner is not entitled to moral and exemplary damages. "A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner." "Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud." "It must be noted that the burden of proving bad faith rests on

the one alleging it" since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. "*Allegations of bad faith and fraud must be proved by clear and convincing evidence*." The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause. However, the petitioner is entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111 of the Labor Code. "It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable." Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Banzuela Velandrez & Associates for petitioner.
Padilla Law Office for respondents.

D E C I S I O N

REYES, *J.*:

Cheryll Santos Leus (petitioner) was hired by St. Scholastica's College Westgrove (SSCW), a Catholic educational institution, as a non-teaching personnel, engaged in pre-marital sexual relations, got pregnant out of wedlock, married the father of her child, and was dismissed by SSCW, in that order. The question that has to be resolved is whether the petitioner's conduct constitutes a ground for her dismissal.

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside

the Decision[1] dated September 24, 2008 and Resolution[2] dated March 2, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 100188, which affirmed the Resolutions dated February 28, 2007[3] and May 21, 2007[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 049222-06.

The Facts

SSCW is a catholic and sectarian educational institution in Silang, Cavite. In May 2001, SSCW hired the petitioner as an Assistant to SSCW's Director of the Lay Apostolate and Community Outreach Directorate.

Sometime in 2003, the petitioner and her boyfriend conceived a child out of wedlock. When SSCW learned of the petitioner's pregnancy, Sr. Edna Quiambao (Sr. Quiambao), SSCW's Directress, advised her to file a resignation letter effective June 1, 2003. In response, the petitioner informed Sr. Quiambao that she would not resign from her employment just because she got pregnant without the benefit of marriage.[5]

On May 28, 2003, Sr. Quiambao formally directed the petitioner to explain in writing why she should not be dismissed for engaging in pre-marital sexual relations and getting pregnant as a result thereof, which amounts to serious misconduct and conduct unbecoming of an employee of a Catholic school.[6]

In a letter[7] dated May 31, 2003, the petitioner explained that her pregnancy out of wedlock does not amount to serious

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores, concurring; *rollo*, pp. 148-156.

[2] *Id*. at 170-170A.

[3] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III, concurring; *id*. at 125-131.

[4] *Id*. at 146-147.

[5] *Id*. at 76.

[6] *Id*. at 77.

[7] *Id*. at 78.

misconduct or conduct unbecoming of an employee. She averred that she is unaware of any school policy stating that being pregnant out of wedlock is considered as a serious misconduct and, thus, a ground for dismissal. Further, the petitioner requested a copy of SSCW's policy and guidelines so that she may better respond to the charge against her.

On June 2, 2003, Sr. Quiambao informed the petitioner that, pending the promulgation of a "Support Staff Handbook," SSCW follows the 1992 Manual of Regulations for Private Schools (1992 MRPS) on the causes for termination of employments; that Section 94(e) of the 1992 MRPS cites "disgraceful or immoral conduct" as a ground for dismissal in addition to the just causes for termination of employment provided under Article 282 of the Labor Code.[8]

On June 4, 2003, the petitioner, through counsel, sent Sr. Quiambao a letter,[9] which, in part, reads:

> To us, pre-marital sex between two consenting adults without legal impediment to marry each other who later on married each other does not fall within the contemplation of "disgraceful or immoral conduct" and "serious misconduct" of the Manual of Regulations for Private Schools and the Labor Code of the Philippines.
>
> Your argument that what happened to our client would set a bad example to the students and other employees of your school is speculative and is more imaginary than real. To dismiss her on that sole ground constitutes grave abuse of management prerogatives.
>
> Considering her untarnished service for two years, dismissing her with her present condition would also mean depriving her to be more secure in terms of financial capacity to sustain maternal needs.[10]

In a letter[11] dated June 6, 2003, SSCW, through counsel, maintained that pre-marital sexual relations, even if between

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[8] *Id*. at 79.

[9] *Id*. at 80.

[10] *Id*.

[11] *Id*. at 84-85.

two consenting adults without legal impediment to marry, is considered a disgraceful and immoral conduct or a serious misconduct, which are grounds for the termination of employment under the 1992 MRPS and the Labor Code. That SSCW, as a Catholic institution of learning, has the right to uphold the teaching of the Catholic Church and expect its employees to abide by the same. They further asserted that the petitioner's indiscretion is further aggravated by the fact that she is the Assistant to the Director of the Lay Apostolate and Community Outreach Directorate, a position of responsibility that the students look up to as role model. The petitioner was again directed to submit a written explanation on why she should not be dismissed.

On June 9, 2003, the petitioner informed Sr. Quiambao that she adopts her counsel's letter dated June 4, 2003 as her written explanation.[12]

Consequently, in her letter[13] dated June 11, 2003, Sr. Quiambao informed the petitioner that her employment with SSCW is terminated on the ground of serious misconduct. She stressed that pre-marital sexual relations between two consenting adults with no impediment to marry, even if they subsequently married, amounts to immoral conduct. She further pointed out that SSCW finds unacceptable the scandal brought about by the petitioner's pregnancy out of wedlock as it ran counter to the moral principles that SSCW stands for and teaches its students.

Thereupon, the petitioner filed a complaint for illegal dismissal with the Regional Arbitration Branch of the NLRC in Quezon City against SSCW and Sr. Quiambao (respondents). In her position paper,[14] the petitioner claimed that SSCW gravely abused its management prerogative as there was no just cause for her dismissal. She maintained that her pregnancy out of wedlock cannot be considered as serious misconduct since the same is a purely private affair and not connected in any way with her

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[12] *Id*. at 82.

[13] *Id*. at 83.

[14] *Id*. at 60-73.

duties as an employee of SSCW. Further, the petitioner averred that she and her boyfriend eventually got married even prior to her dismissal.

For their part, SSCW claimed that there was just cause to terminate the petitioner's employment with SSCW and that the same is a valid exercise of SSCW's management prerogative. They maintained that engaging in pre-marital sex, and getting pregnant as a result thereof, amounts to a disgraceful or immoral conduct, which is a ground for the dismissal of an employee under the 1992 MRPS.

They pointed out that SSCW is a Catholic educational institution, which caters exclusively to young girls; that SSCW would lose its credibility if it would maintain employees who do not live up to the values and teachings it inculcates to its students. SSCW further asserted that the petitioner, being an employee of a Catholic educational institution, should have strived to maintain the honor, dignity and reputation of SSCW as a Catholic school.[15]

The Ruling of the Labor Arbiter

On February 28, 2006, the Labor Arbiter (LA) rendered a Decision,[16] in NLRC Case No. 6-17657-03-C which dismissed the complaint filed by the petitioner. The LA found that there was a valid ground for the petitioner's dismissal; that her pregnancy out of wedlock is considered as a "disgraceful and immoral conduct." The LA pointed out that, as an employee of a Catholic educational institution, the petitioner is expected to live up to the Catholic values taught by SSCW to its students. Likewise, the LA opined that:

> Further, a deep analysis of the facts would lead us to disagree with the complainant that she was dismissed simply because she violate[d] a Catholic [teaching]. It should not be taken in isolation but rather it should be analyzed in the light of the surrounding

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[15] *Id.* at 86-94.

[16] Rendered by LA Danna M. Castillon; *id.* at 104-110.

circumstances as a whole. We must also take into [consideration] the nature of her work and the nature of her employer-school. For us, it is not just an ordinary violation. It was committed by the complainant in an environment where her strict adherence to the same is called for and where the reputation of the school is at stake. x x x.[17]

The LA further held that teachers and school employees, both in their official and personal conduct, must display exemplary behavior and act in a manner that is beyond reproach.

The petitioner appealed to the NLRC, insisting that there was no valid ground for the termination of her employment. She maintained that her pregnancy out of wedlock cannot be considered as "serious misconduct" under Article 282 of the Labor Code since the same was not of such a grave and aggravated character. She asserted that SSCW did not present any evidence to establish that her pregnancy out of wedlock indeed eroded the moral principles that it teaches its students.[18]

The Ruling of the NLRC

On February 28, 2007, the NLRC issued a Resolution,[19] which affirmed the LA Decision dated February 28, 2006. The NLRC pointed out that the termination of the employment of the personnel of private schools is governed by the 1992 MRPS; that Section 94(e) thereof cites "disgraceful or immoral conduct" as a just cause for dismissal, in addition to the grounds for termination of employment provided for under Article 282 of the Labor Code. The NLRC held that the petitioner's pregnancy out of wedlock is a "disgraceful or immoral conduct" within the contemplation of Section 94(e) of the 1992 MRPS and, thus, SSCW had a valid reason to terminate her employment.

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[17] *Id*. at 108.

[18] *Id*. at 111-124.

[19] *Id*. at 125-131.

The petitioner sought reconsideration[20] of the Resolution dated February 28, 2007 but it was denied by the NLRC in its Resolution[21] dated May 21, 2007.

Unperturbed, the petitioner filed a petition[22] for *certiorari* with the CA, alleging that the NLRC gravely abused its discretion in ruling that there was a valid ground for her dismissal. She maintained that pregnancy out of wedlock cannot be considered as a disgraceful or immoral conduct; that SSCW failed to prove that its students were indeed gravely scandalized by her pregnancy out of wedlock. She likewise asserted that the NLRC erred in applying Section 94(e) of the 1992 MRPS.

The Ruling of the CA

On September 24, 2008, the CA rendered the herein assailed Decision,[23] which denied the petition for *certiorari* filed by the petitioner. The CA held that it is the provisions of the 1992 MRPS and not the Labor Code which governs the termination of employment of teaching and non-teaching personnel of private schools, explaining that:

> It is a principle of statutory construction that where there are two statutes that apply to a particular case, that which was specially intended for the said case must prevail. Petitioner was employed by respondent private Catholic institution which undeniably follows the precepts or norms of conduct set forth by the Catholic Church. Accordingly, the Manual of Regulations for Private Schools followed by it must prevail over the Labor Code, a general statute. The Manual constitutes the private schools' Implementing Rules and Regulations of Batas Pambansa Blg. 232 or the Education Act of 1982. x x x.[24]

The CA further held that the petitioner's dismissal was a valid exercise of SSCW's management prerogative to discipline

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[20] *Id*. at 133-145.

[21] *Id*. at 146-147.

[22] *Id*. at 35-58.

[23] *Id*. at 148-156.

[24] *Id*. at 153.

and impose penalties on erring employees pursuant to its policies, rules and regulations. The CA upheld the NLRC's conclusion that the petitioner's pregnancy out of wedlock is considered as a "disgraceful and immoral conduct" and, thus, a ground for dismissal under Section 94(e) of the 1992 MRPS. The CA likewise opined that the petitioner's pregnancy out of wedlock is scandalous *per se* given the work environment and social milieu that she was in, *viz*:

> Under Section 94 (e) of the [MRPS], and even under Article 282 (serious misconduct) of the Labor Code, "disgraceful and immoral conduct" is a basis for termination of employment.
>
> x x x x x x x x x
>
> Petitioner contends that her pre-marital sexual relations with her boyfriend and her pregnancy prior to marriage was not disgraceful or immoral conduct sufficient for her dismissal because she was not a member of the school's faculty and there is no evidence that her pregnancy scandalized the school community.
>
> We are not persuaded. Petitioner's pregnancy prior to marriage is scandalous in itself given the work environment and social milieu she was in. Respondent school for young ladies precisely seeks to prevent its students from situations like this, inculcating in them strict moral values and standards. Being part of the institution, petitioner's private and public life could not be separated. Her admitted pre-marital sexual relations was a violation of private respondent's prescribed standards of conduct that views pre-marital sex as immoral because sex between a man and a woman must only take place within the bounds of marriage.
>
> Finally, petitioner's dismissal is a valid exercise of the employer-school's management prerogative to discipline and impose penalties on erring employees pursuant to its policies, rules and regulations. x x x.[25] (Citations omitted)

The petitioner moved for reconsideration[26] but it was denied by the CA in its Resolution[27] dated March 2, 2009.

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

[26] *Id*. at 157-169.

[27] *Id*. at 170-170A.

Hence, the instant petition.

Issues

Essentially, the issues set forth by the petitioner for this Court's decision are the following: *first*, whether the CA committed reversible error in ruling that it is the 1992 MRPS and not the Labor Code that governs the termination of employment of teaching and non-teaching personnel of private schools; and *second*, whether the petitioner's pregnancy out of wedlock constitutes a valid ground to terminate her employment.

The Ruling of the Court

The Court grants the petition.

First Issue: Applicability of the 1992 MRPS

The petitioner contends that the CA, in ruling that there was a valid ground to dismiss her, erred in applying Section 94 of the 1992 MRPS. Essentially, she claims that the 1992 MRPS was issued by the Secretary of Education as the revised implementing rules and regulations of Batas Pambansa Bilang 232 (BP 232) or the "Education Act of 1982." That there is no provision in BP 232, which provides for the grounds for the termination of employment of teaching and non-teaching personnel of private schools. Thus, Section 94 of the 1992 MRPS, which provides for the causes of terminating an employment, is invalid as it "widened the scope and coverage" of BP 232.

The Court does not agree.

The Court notes that the argument against the validity of the 1992 MRPS, specifically Section 94 thereof, is raised by the petitioner for the first time in the instant petition for review. Nowhere in the proceedings before the LA, the NLRC or the CA did the petitioner assail the validity of the provisions of the 1992 MRPS.

"It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments

not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process."[28]

In any case, even if the Court were to disregard the petitioner's belated claim of the invalidity of the 1992 MRPS, the Court still finds the same untenable.

The 1992 MRPS, the regulation in force at the time of the instant controversy, was issued by the Secretary of Education pursuant to BP 232. Section 70[29] of BP 232 vests the Secretary of Education with the authority to issue rules and regulations to implement the provisions of BP 232. Concomitantly, Section 57[30] specifically empowers the Department of Education to promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with the declared policy of BP 232.

The qualifications of teaching and non-teaching personnel of private schools, as well as the causes for the termination of their employment, are an integral aspect of the educational system of private schools. Indubitably, ensuring that the teaching and non-teaching personnel of private schools are not only qualified, but competent and efficient as well goes hand in hand with the declared objective of BP 232 – establishing and maintaining

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[28] *Ayala Land, Inc. v. Castillo*, G.R. No. 178110, June 15, 2011, 652 SCRA 143, 158.

[29] Sec. 70. *Rule-making Authority* - The Minister Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

[30] Sec. 57. *Functions and Powers of the Ministry* - The Ministry shall:

x x x x x x x x x

3. Promulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy;

x x x x x x x x x

relevant quality education.[31] It is thus within the authority of the Secretary of Education to issue a rule, which provides for the dismissal of teaching and non-teaching personnel of private schools based on their incompetence, inefficiency, or some other disqualification.

Moreover, Section 69 of BP 232 specifically authorizes the Secretary of Education to "prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations" for the "[g]ross inefficiency of the teaching or non-teaching personnel" of private schools.[32] Accordingly, contrary to the petitioner's claim, the Court sees no reason to invalidate the provisions of the 1992 MRPS, specifically Section 94 thereof.

Second Issue: Validity of the Petitioner's Dismissal

The validity of the petitioner's dismissal hinges on the determination of whether pregnancy out of wedlock by an employee of a catholic educational institution is a cause for the termination of her employment.

In resolving the foregoing question, the Court will assess the matter from a strictly neutral and secular point of view – the relationship between SSCW as employer and the petitioner as an employee, the causes provided for by law in the termination of such relationship, and the evidence on record. The ground cited for the petitioner's dismissal, *i.e.*, pre-marital sexual relations and, consequently, pregnancy out of wedlock, will be assessed as to whether the same constitutes a valid ground for dismissal pursuant to Section 94(e) of the 1992 MRPS.

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[31] Sec. 3 of BP 232.

[32] Sec. 69. *Administrative Sanction* - The Minister of Education, Culture and Sports may prescribe and impose such administrative sanction as he may deem reasonable and appropriate in the implementing rules and regulations promulgated pursuant to this Act for any of the following causes:

x x x x x x x x x

2. Gross inefficiency of the teaching or non-teaching personnel;

x x x x x x x x x

The standard of review in a Rule 45 petition from the CA decision in labor cases.

In a petition for review under Rule 45 of the Rules of Court, such as the instant petition, where the CA's disposition in a labor case is sought to be calibrated, the Court's review is quite limited. In ruling for legal correctness, the Court has to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; the Court has 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.[33]

The phrase "grave abuse of discretion" is well-defined in the Court's jurisprudence. It exists where an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction.[34] The determination of the presence or absence of grave abuse of discretion does not include an inquiry into the correctness of the evaluation of evidence, which was the basis of the labor agency in reaching its conclusion.[35]

Nevertheless, while a *certiorari* proceeding does not strictly include an inquiry as to the correctness of the evaluation of evidence (that was the basis of the labor tribunals in determining their conclusion), the incorrectness of its evidentiary evaluation should not result in negating the requirement of substantial evidence. **Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts.** In particular, the CA can grant the petition for *certiorari* if it finds that the

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[33] *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.*, 613 Phil. 696, 707 (2009).

[34] *Jinalinan Technical School, Inc. v. NLRC (Fourth Div.)*, 530 Phil. 77, 82 (2006).

[35] See *G&S Transport Corporation v. Infante*, 559 Phil. 701, 709 (2007).

NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. A decision that is not supported by substantial evidence is definitely a decision tainted with grave abuse of discretion.[36]

The labor tribunals' respective conclusions that the petitioner's pregnancy is a "disgraceful or immoral conduct" were arrived at arbitrarily.

The CA and the labor tribunals affirmed the validity of the petitioner's dismissal pursuant to Section 94(e) of the 1992 MRPS, which provides that:

Sec. 94. Causes of Terminating Employment – In addition to the just causes enumerated in the Labor Code, the employment of school personnel, including faculty, may be terminated for any of the following causes:

x x x x x x x x x

e. Disgraceful or immoral conduct;

x x x x x x x x x

The labor tribunals concluded that the petitioner's pregnancy out of wedlock, *per se*, is "disgraceful and immoral" considering that she is employed in a Catholic educational institution. In arriving at such conclusion, the labor tribunals merely assessed the fact of the petitioner's pregnancy *vis-à-vis* the totality of the circumstances surrounding the same.

However, the Court finds no substantial evidence to support the aforementioned conclusion arrived at by the labor tribunals. The fact of the petitioner's pregnancy out of wedlock, without more, is not enough to characterize the petitioner's conduct as disgraceful or immoral. There must be substantial evidence to

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[36] *See* Concurring and Dissenting Opinion, Brion, *J.*, *INC Shipmanagement, Inc. v. Moradas,* G.R. No. 178564, January 15, 2014, 713 SCRA 475, 499-500; *Maralit v. PNB,* 613 Phil. 270, 288-289 (2009).

establish that pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral.

The totality of the circumstances surrounding the conduct alleged to be disgraceful or immoral must be assessed against the prevailing norms of conduct.

In *Chua-Qua v. Clave*,[37] the Court stressed that to constitute immorality, the circumstances of each particular case must be holistically considered and **evaluated in light of the prevailing norms of conduct** and applicable laws.[38] Otherwise stated, it is not the totality of the circumstances surrounding the conduct *per se* that determines whether the same is disgraceful or immoral, but the conduct that is generally accepted by society as respectable or moral. If the conduct does not conform to what society generally views as respectable or moral, then the conduct is considered as disgraceful or immoral. Tersely put, substantial evidence must be presented, which would establish that a particular conduct, viewed in light of the prevailing norms of conduct, is considered disgraceful or immoral.

Thus, the determination of whether a conduct is disgraceful or immoral involves a two-step process: *first*, a consideration of the totality of the circumstances surrounding the conduct; and *second*, an assessment of the said circumstances *vis-à-vis* the prevailing norms of conduct, *i.e.*, what the society generally considers moral and respectable.

That the petitioner was employed by a Catholic educational institution *per se* does not absolutely determine whether her pregnancy out of wedlock is disgraceful or immoral. There is still a necessity to determine whether the petitioner's pregnancy out of wedlock is considered disgraceful or immoral in accordance with the prevailing norms of conduct.

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[37] G.R. No. 49549, August 30, 1990, 189 SCRA 117.

[38] *Id*. at 124.

Public and secular morality should determine the prevailing norms of conduct, not religious morality.

However, determining what the prevailing norms of conduct are considered disgraceful or immoral is not an easy task. An individual's perception of what is moral or respectable is a confluence of a myriad of influences, such as religion, family, social status, and a cacophony of others. In this regard, the Court's ratiocination in *Estrada v. Escritor*[39] is instructive.

In *Estrada*, an administrative case against a court interpreter charged with disgraceful and immoral conduct, the Court stressed that in determining whether a particular conduct can be considered as disgraceful and immoral, the distinction between public and secular morality on the one hand, and religious morality, on the other, should be kept in mind.[40] That the distinction between public and secular morality and religious morality is important because the jurisdiction of the Court extends only to public and secular morality.[41] The Court further explained that:

> **The morality referred to in the law is public and necessarily secular, not religious** x x x. "Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms." **Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda.** The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion," anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it

[39] 455 Phil. 411 (2003).

[40] *Id*. at 587-588.

[41] *Id*. at 591.

appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.

In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other. Although admittedly, moral judgments based on religion might have a compelling influence on those engaged in public deliberations over what actions would be considered a moral disapprobation punishable by law. After all, they might also be adherents of a religion and thus have religious opinions and moral codes with a compelling influence on them; the human mind endeavors to regulate the temporal and spiritual institutions of society in a uniform manner, harmonizing earth with heaven. **Succinctly put, a law could be religious or Kantian or Aquinian or utilitarian in its deepest roots, but it must have an articulable and discernible secular purpose and justification to pass scrutiny of the religion clauses.** x x x.[42] (Citations omitted and emphases ours)

Accordingly, when the law speaks of immoral or, necessarily, disgraceful conduct, it pertains to public and secular morality; it refers to those conducts which are proscribed because they are **detrimental to conditions upon which depend the existence and progress of human society**. Thus, in *Anonymous v. Radam*,[43] an administrative case involving a court utility worker likewise charged with disgraceful and immoral conduct, applying the doctrines laid down in *Estrada*, the Court held that:

For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It

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[42] *Id*. at 588-590.

[43] 565 Phil. 321 (2007).

cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.

Under these tests, two things may be concluded from the fact that an unmarried woman gives birth out of wedlock:

(1) **if the father of the child is himself unmarried, the woman is not ordinarily administratively liable for disgraceful and immoral conduct.** It may be a not-so-ideal situation and may cause complications for both mother and child but it does not give cause for administrative sanction. **There is no law which penalizes an unmarried mother under those circumstances by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons. Neither does the situation contravene any fundamental state policy as expressed in the Constitution, a document that accommodates various belief systems irrespective of dogmatic origins.**

(2) **if the father of the child born out of wedlock is himself married to a woman other than the mother, then there is a cause for administrative sanction against either the father or the mother. In such a case, the "disgraceful and immoral conduct" consists of having extramarital relations with a married person.** The sanctity of marriage is constitutionally recognized and likewise affirmed by our statutes as a special contract of permanent union. Accordingly, judicial employees have been sanctioned for their dalliances with married persons or for their own betrayals of the marital vow of fidelity.

In this case, it was not disputed that, like respondent, the father of her child was unmarried. Therefore, respondent cannot be held liable for disgraceful and immoral conduct simply because she gave birth to the child Christian Jeon out of wedlock.[44] (Citations omitted and emphases ours)

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[44] *Id*. at 327-328.

Both *Estrada* and *Radam* are administrative cases against employees in the civil service. The Court, however, sees no reason not to apply the doctrines enunciated in *Estrada* and *Radam* in the instant case. *Estrada* and *Radam* also required the Court to delineate what conducts are considered disgraceful and/or immoral as would constitute a ground for dismissal. More importantly, as in the said administrative cases, the instant case involves an employee's security of tenure; this case likewise concerns employment, which is not merely a specie of property right, but also the means by which the employee and those who depend on him live.[45]

It bears stressing that the right of an employee to security of tenure is protected by the Constitution. Perfunctorily, a regular employee may not be dismissed unless for cause provided under the Labor Code and other relevant laws, in this case, the 1992 MRPS. As stated above, when the law refers to morality, it necessarily pertains to public and secular morality and not religious morality. Thus, the proscription against "disgraceful or immoral conduct" under Section 94(e) of the 1992 MRPS, which is made as a cause for dismissal, must necessarily refer to public and secular morality. Accordingly, in order for a conduct to be considered as disgraceful or immoral, it must be "'detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society' and not because the conduct is proscribed by the beliefs of one religion or the other."

Thus, in *Santos v. NLRC*,[46] the Court upheld the dismissal of a teacher who had an extra-marital affair with his co-teacher, who is likewise married, on the ground of disgraceful and immoral conduct under Section 94(e) of the 1992 MRPS. The Court pointed out that extra-marital affair is considered as a disgraceful and immoral conduct is an afront to the sanctity of marriage, which is a basic institution of society, *viz*:

> We cannot overemphasize that having an extra-marital affair is an afront to the sanctity of marriage, which is a basic institution of

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[45] *Id*. at 329.

[46] 350 Phil. 560 (1998).

society. Even our Family Code provides that husband and wife must live together, observe mutual love, respect and fidelity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Our laws, in implementing this constitutional edict on marriage and the family underscore their permanence, inviolability and solidarity.[47]

The petitioner's pregnancy out of wedlock is not a disgraceful or immoral conduct since she and the father of her child have no impediment to marry each other.

In stark contrast to *Santos*, the Court does not find any circumstance in this case which would lead the Court to conclude that the petitioner committed a disgraceful or immoral conduct. It bears stressing that the petitioner and her boyfriend, at the time they conceived a child, had no legal impediment to marry. Indeed, even prior to her dismissal, the petitioner married her boyfriend, the father of her child. As the Court held in *Radam*, there is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons; that neither does such situation contravene any fundamental state policy enshrined in the Constitution.

Admittedly, the petitioner is employed in an educational institution where the teachings and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students. That her indiscretion, which resulted in her pregnancy out of wedlock, is anathema to the doctrines of the Catholic Church. However, viewed against the prevailing norms of conduct, the petitioner's conduct cannot be considered as disgraceful or immoral; such conduct is not denounced by public and secular morality. It may be an unusual arrangement, but it certainly is not disgraceful or immoral within the contemplation of the law.

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[47] *Id*. at 569.

To stress, pre-marital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS.

Accordingly, the labor tribunals erred in upholding the validity of the petitioner's dismissal. The labor tribunals arbitrarily relied solely on the circumstances surrounding the petitioner's pregnancy and its supposed effect on SSCW and its students without evaluating whether the petitioner's conduct is indeed considered disgraceful or immoral in view of the prevailing norms of conduct. In this regard, the labor tribunals' respective haphazard evaluation of the evidence amounts to grave abuse of discretion, which the Court will rectify.

The labor tribunals' finding that the petitioner's pregnancy out of wedlock despite the absence of substantial evidence is not only arbitrary, but a grave abuse of discretion, which should have been set right by the CA.

There is no substantial evidence to prove that the petitioner's pregnancy out of wedlock caused grave scandal to SSCW and its students.

SSCW claimed that the petitioner was primarily dismissed because her pregnancy out of wedlock caused grave scandal to SSCW and its students. That the scandal brought about by the petitioner's indiscretion prompted them to dismiss her. The LA upheld the respondents' claim, stating that:

> In this particular case, an "objective" and "rational evaluation" of the facts and circumstances obtaining in this case would lead us to focus our attention x x x **on the impact of the act committed by the complainant**. The act of the complainant x x x **eroded the moral principles being taught and project[ed] by the respondent [C]atholic school to their young lady students**.[48] (Emphasis in the original)

[48] *Rollo*, p. 107.

On the other hand, the NLRC opined that:

In the instant case, when the complainant-appellant was already conceiving a child even before she got married, such is considered a shameful and scandalous behavior, inimical to public welfare and policy. **It eroded the moral doctrines which the respondent Catholic school, an exclusive school for girls, is teaching the young girls. Thus, when the respondent-appellee school terminated complainant-appellant's services, it was a valid exercise of its management prerogative.** Whether or not she was a teacher is of no moment. There is no separate set of rules for non-teaching personnel. Respondents-appellees uphold the teachings of the Catholic Church on pre-marital sex and that the complainant-appellant as an employee of the school was expected to abide by this basic principle and to live up with the standards of their purely Catholic values. Her subsequent marriage did not take away the fact that she had engaged in pre-marital sex which the respondent-appellee school denounces as the same is opposed to the teachings and doctrines it espouses.[49] (Emphasis ours)

Contrary to the labor tribunals' declarations, the Court finds that SSCW failed to adduce substantial evidence to prove that the petitioner's indiscretion indeed caused grave scandal to SSCW and its students. Other than the SSCW's bare allegation, the records are bereft of any evidence that would convincingly prove that the petitioner's conduct indeed adversely affected SSCW's integrity in teaching the moral doctrines, which it stands for. The petitioner is only a non-teaching personnel; her interaction with SSCW's students is very limited. It is thus quite impossible that her pregnancy out of wedlock caused such a grave scandal, as claimed by SSCW, as to warrant her dismissal.

Settled is the rule that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is

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

not justified and therefore illegal.[50] "Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[51]

Indubitably, bare allegations do not amount to substantial evidence. Considering that the respondents failed to adduce substantial evidence to prove their asserted cause for the petitioner's dismissal, the labor tribunals should not have upheld their allegations hook, line and sinker. The labor tribunals' respective findings, which were arrived at *sans* any substantial evidence, amounts to a grave abuse of discretion, which the CA should have rectified. "Security of tenure is a right which may not be denied on mere speculation of any unclear and nebulous basis."[52]

The petitioner's dismissal is not a valid exercise of SSCW's management prerogative.

The CA belabored the management prerogative of SSCW to discipline its employees. The CA opined that the petitioner's dismissal is a valid exercise of management prerogative to impose penalties on erring employees pursuant to its policies, rules and regulations.

The Court does not agree.

The Court has held that "management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees,

[50] *Seven Star Textile Company v. Dy*, 541 Phil. 468, 479 (2007).

[51] *Hon. Ombudsman Marcelo v. Bungubung, et al.*, 575 Phil. 538, 556 (2008), citing *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

[52] *Escareal v. National Labor Relations Commission,* G.R. No. 99359, September 2, 1992, 213 SCRA 472, 489.

work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor." Management cannot exercise its prerogative in a cruel, repressive, or despotic manner.[53]

SSCW, as employer, undeniably has the right to discipline its employees and, if need be, dismiss them if there is a valid cause to do so. However, as already explained, there is no cause to dismiss the petitioner. Her conduct is not considered by law as disgraceful or immoral. Further, the respondents themselves have admitted that SSCW, at the time of the controversy, does not have any policy or rule against an employee who engages in pre-marital sexual relations and conceives a child as a result thereof. There being no valid basis in law or even in SSCW's policy and rules, SSCW's dismissal of the petitioner is despotic and arbitrary and, thus, not a valid exercise of management prerogative.

In sum, the Court finds that the petitioner was illegally dismissed as there was no just cause for the termination of her employment. SSCW failed to adduce substantial evidence to establish that the petitioner's conduct, *i.e.*, engaging in pre-marital sexual relations and conceiving a child out of wedlock, assessed in light of the prevailing norms of conduct, is considered disgraceful or immoral. The labor tribunals gravely abused their discretion in upholding the validity of the petitioner's dismissal as the charge against the petitioner lay not on substantial evidence, but on the bare allegations of SSCW. In turn, the CA committed reversible error in upholding the validity of the petitioner's dismissal, failing to recognize that the labor tribunals gravely abused their discretion in ruling for the respondents.

The petitioner is entitled to separation pay, in lieu of actual reinstatement, full backwages and

[53] See *Andrada v. National Labor Relations Commission*, 565 Phil. 821, 839 (2007).

attorney's fees, but not to moral and exemplary damages.

Having established that the petitioner was illegally dismissed, the Court now determines the reliefs that she is entitled to and their extent. Under the law and prevailing jurisprudence, "an illegally dismissed employee is entitled to reinstatement as a matter of right."[54] Aside from the instances provided under Articles 283[55] and 284[56] of the Labor Code, separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.[57]

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[54] *Quijano v. Mercury Drug Corporation,* 354 Phil. 112, 121 (1998).

[55] Article 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 Ministry 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 or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) 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.

[56] Article 284. *Disease as ground for termination.* An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[57] *Leopard Security and Investigation Agency v. Quitoy*, G.R. No. 186344, February 20, 2013, 691 SCRA 440, 450-451.

In *Divine Word High School v. NLRC*,[58] the Court ordered the employer Catholic school to pay the illegally dismissed high school teacher separation pay in lieu of actual reinstatement since her continued presence as a teacher in the school "may well be met with antipathy and antagonism by some sectors in the school community."[59]

In view of the particular circumstances of this case, it would be more prudent to direct SSCW to pay the petitioner separation pay in lieu of actual reinstatement. The continued employment of the petitioner with SSCW would only serve to intensify the atmosphere of antipathy and antagonism between the parties. Consequently, the Court awards separation pay to the petitioner equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of her illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.

Also, "employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision."[60] Accordingly, the petitioner is entitled to an award of full backwages from the time she was illegally dismissed up to the finality of this decision.

Nevertheless, the petitioner is not entitled to moral and exemplary damages. "A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner."[61]

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[58] 227 Phil. 322 (1986).

[59] *Id.* at 326.

[60] *Coca-Cola Bottlers Phils., Inc. v. del Villar*, 646 Phil. 587, 615 (2010).

[61] *Quadra v. Court of Appeals,* 529 Phil. 218, 223-224 (2006).

"Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[62]

"It must be noted that the burden of proving bad faith rests on the one alleging it"[63] since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.[64] "*Allegations of bad faith and fraud must be proved by clear and convincing evidence*."[65]

The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.[66]

However, the petitioner is entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111[67] of the Labor Code. "It is settled that where an employee was

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[62] *Nazareno, et al. v. City of Dumaguete*, 607 Phil. 768, 804 (2009).

[63] *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA)*, G.R. No. 187107, January 31, 2012, 664 SCRA 483, 494.

[64] *Culili v. Eastern Telecommunications Philippines, Inc.,* G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.

[65] *Palada v. Solidbank Corporation*, G.R. No. 172227, June 29, 2011, 653 SCRA 10, 11.

[66] See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 720.

[67] Art. 111. *Attorney's Fees.*

(a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."[68]

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.[69]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated September 24, 2008 and Resolution dated March 2, 2009 of the Court of Appeals in CA-G.R. SP No. 100188 are hereby **REVERSED** and **SET ASIDE**.

The respondent, St. Scholastica's College Westgrove, is hereby declared guilty of illegal dismissal and is hereby **ORDERED** to pay the petitioner, Cheryll Santos Leus, the following: (a) separation pay in lieu of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the time of her dismissal up to the finality of this Decision; (b) full backwages from the time of her illegal dismissal up to the finality of this Decision; and (c) Attorney's fees equivalent to ten percent (10%) of the total monetary award. The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid. The case is **REMANDED** to the Labor Arbiter for the computation of petitioner's monetary awards.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr., and *Jardeleza, JJ.,* concur.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[68] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, *supra* note 65, at 721.

[69] See *Garza v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 180972, January 20, 2014, 714 SCRA 251, 274-275; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

THIRD DIVISION

[G.R. No. 193451. January 28, 2015]

ANTONIO M. MAGTALAS, *petitioner, vs.* **ISIDORO A. ANTE, RAUL C. ADDATU, NICANOR B. PADILLA, JR., DANTE Y. CEÑIDO, and RHAMIR C. DALIOAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE EXECUTION OF THE RELEASE, WAIVER AND QUITCLAIM AND THE ADDENDUM THERETO RENDERED THE CASE AT BAR MOOT AND ACADEMIC.— In the case at bar, petitioner Magtalas was impleaded in the original complaint in his official capacity as then Review Director of the CPA Review Center of PSBA-Manila. The Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) with the negotiated amount of Nine Million Philippine Pesos (PHP 9,000,000.00) was signed by **all** five of the respondents in this case as full and final settlement of all of their claims for remuneration, wages and/or benefits of whatever nature from PSBA and its directors, officers, agents and/or employees – clearly including herein petitioner. The Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) executed on March 23, 2011 has now therefore rendered this case moot and academic. To be sure, not one of the respondents herein has assailed the validity and enforceability of the two documents executed on March 23, 2011 – either in this petition or in the consolidated cases of G.R. Nos. 193438 and 194184. None of the respondents also filed any opposition when PSBA-Manila and Peralta filed a Manifestation with Motion to Dismiss on April 14, 2011 for the dismissal of the consolidated petitions docketed under G.R. Nos. 193438 and 194184 in view of the execution of both documents pertaining to the release, waiver and quitclaim. Further, there was no opposition from respondents when the Third Division of the Court issued a Resolution on June 8, 2011 granting such motion to dismiss.

APPEARANCES OF COUNSEL

Gabriel Law Office for petitioner.
Nicanor B. Padilla, Jr. for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

At bar is a petition[1] for review on *certiorari* of the Decision[2] dated June 22, 2010 and the Resolution[3] dated August 11, 2010 of the Court of Appeals (CA) in the consolidated petitions docketed as CA-G.R. SP No. 107029 and CA-G.R. SP No. 107316, which affirmed the assailed Resolutions[4] of the National Labor Relations Commission (NLRC). The NLRC Resolutions dismissed the appeal filed by petitioner Antonio M. Magtalas (Magtalas) and Philippine School of Business Administration (PSBA), *et al*. in NLRC NCR Case No. 00-04-03133-06 for failure to perfect such appeal under Sections 4 and 6 of the NLRC Rules of Procedure.

Petitioner Magtalas is the Certified Public Accountant (CPA) Review Director of the CPA Review Center of the Philippine School of Business Administration-Manila (PSBA-Manila). He was impleaded in this case in his official capacity.[5]

PSBA is a corporation duly organized and existing under Philippine laws. It is engaged in business as an educational institution and offers review classes to candidates for the CPA Licensure Examinations.[6]

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[1] *Rollo*, pp. 9-40.

[2] *Id*. at 42-55. Penned by Associate Justice Sesinando E. Villon with Associate Justices Marlene Gonzales-Sison and Amy C. Lazaro-Javier concurring.

[3] *Id*. at 57-57-A.

[4] *Id*. at 114-121, 143-146. Dated June 25, 2008 and November 25, 2008.

[5] *Id*. at 12.

[6] *Id*.

Respondents Isidoro A. Ante, Raul C. Addatu, Nicanor B. Padilla, Jr., Dante Y. Ceñido and Rhamir C. Dalioan were engaged by PSBA-Manila as professional reviewers at its CPA Review Center and were paid on an hourly basis. However, for the school year 2005-2006, they were not given any review load.[7] Respondents then sent a letter to the President of PSBA-Manila, Jose F. Peralta (Peralta), requesting for the payment of termination or retirement benefits for failure of PSBA-Manila to give them review load for the said school year. Petitioner and Peralta sent respondents individual replies stating that they were not entitled to retirement or termination benefits because they do not have an employer-employee relationship, but a professional-client relationship.[8]

Consequently, respondents filed a complaint for constructive illegal dismissal, non-payment of overtime pay, holiday pay, premium for holiday pay, vacation and sick leave pay, 13th month pay, separation pay and retirement benefits, as well as for moral, exemplary, actual, nominal and temperate damages and attorney's fees[9] against PSBA-Manila, Peralta and herein petitioner with the Labor Arbitration Branch of the NLRC.

In a Decision[10] dated October 9, 2007, Labor Arbiter Fe Superiaso-Cellan found petitioner, PSBA-Manila and the other persons named in the complaint liable for illegal dismissal. Finding that respondents are regular employees of PSBA-Manila, the Labor Arbiter ordered PSBA-Manila, Peralta and petitioner to pay respondents back wages, separation pay and other benefits and damages.

In a Memorandum on Appeal[11] dated November 9, 2007, petitioner Magtalas alone filed with the NLRC a **separate** appeal

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[7] *Id*. at 12-13.

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

[9] *Id*. at 59.

[10] *Id*. at 59-83.

[11] *Id*. at 87-108.

with a simultaneous Motion to Reduce Bond.[12] Petitioner deposited only ₱100,000.00 as cash bond, with motion to reduce bond due to his incapacity of posting either a cash bond equivalent to the monetary award to respondents amounting to around ₱10,250,000.00 or the ₱600,000.00 premium of a surety bond for such amount.

PSBA-Manila and Peralta, on the other hand, separately posted a cash bond of ₱50,000.00 with Motion to Reduce Bond.

In the assailed Resolution dated June 25, 2008, the NLRC jointly resolved and dismissed the separate appeals of petitioner Magtalas on one hand, and PSBA-Manila and Peralta on the other, on the ground of non-perfection. It held that the cash bonds posted by the separate appeals of petitioner, as well as PSBA-Manila and Peralta, were not reasonable amounts, and did not interrupt the running of the period to perfect an appeal. The NLRC ruled, *viz.*:

> **WHEREFORE**, premises considered, the appeals are DISMISSED for non-perfection. The assailed decision dated October 09, 2007 is hereby AFFIRMED and rendered FINAL and EXECUTORY. The motions to reduce bond are DENIED for lack of merit.
>
> **SO ORDERED**.[13]

Petitioner moved for reconsideration,[14] but the motion was denied in a Resolution dated November 25, 2008 for lack of merit, *viz.*:

> **WHEREFORE**, in light of the foregoing, the Motion for Reconsideration is hereby **DENIED** for lack of merit. No further Motions shall be entertained.
>
> SO ORDERED.[15]

Petitioner then filed a Petition for *Certiorari*[16] – separately from PSBA-Manila and Peralta – with the CA. The petition

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[12] *Id*. at 110-112.

[13] *Id*. at 121.

[14] *Id*. at 122-141.

[15] *Id*. at 145.

[16] *Id*. at 147-175.

filed by Magtalas was docketed as CA-G.R. SP No. 107316, while PSBA-Manila and Peralta's petition was docketed as CA-G.R. SP No. 107029. Herein respondents subsequently moved to consolidate the petitions. The appellate court granted the motion.

In the assailed Decision promulgated on June 22, 2010, the CA affirmed the ruling of the NLRC and dismissed the consolidated petitions, *viz.*:

> ***WHEREFORE***, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent National Labor Relations Commission, Sixth Division, the assailed Resolutions dated June 25, 2008 and November 25, 2008 issued in NLRC LAC No. 12-003259-07, which dismissed the appeal filed by petitioners in NLRC NCR Case No. 00-04-03133-06 for failure to perfect the same pursuant to Sections 4 and 6 of the NLRC Rules of Procedure, are hereby **AFFIRMED**. The consolidated petitions for *certiorari* docketed as CA-G.R. SP No. 107029 and CA-G.R. SP No. 107316 are hereby **DISMISSED**.
>
> SO ORDERED.[17]

Petitioner Magtalas sought reconsideration in a motion[18] dated July 15, 2010, but the motion was denied by the appellate court in its Resolution dated August 11, 2010, *viz.*:

> **WHEREFORE**, the instant Motions for Reconsideration are **DENIED** for lack of merit.
>
> SO ORDERED.[19]

Petitioner Magtalas seeks recourse to this Court *via* the instant petition for review filed on October 8, 2010 and assigned this docket number. The instant petition assails the dismissal of his appeal by the NLRC due to his failure to post a sufficient bond. Petitioner also reiterates his argument that he is not covered by

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[17] *Id*. at 54.

[18] *Id*. at 176-185.

[19] *Id*. at 57-A.

the rule of the NLRC on appeal bonds because he was not the employer of respondents. He also questions the findings of the NLRC that respondents were regular employees of PSBA-Manila and that they were illegally dismissed.

PSBA-Manila and Peralta, for their part, separately filed an appeal from the same CA decision with this Court. The petitions were docketed as G.R. Nos. 193438 and 194184 which were raffled off to the Second Division. The instant petition, however, was not consolidated with these two cases under the Second Division.

During the pendency of the three petitions, a Release, Waiver, and Quitclaim[20] was executed before Labor Arbiter Cellan under docket numbers NLRC LAC No. 12-003259-07 and RAB CASE No. 00-04-03133-06. It was dated and stamp received by the Office of the Labor Arbiter, NLRC-NCR on March 23, 2011. The Release, Waiver, and Quitclaim states, *viz.*:

> We, complainants **Isidoro A. Ante, Raul C. Addatu, Nicanor B. Padilla, Jr., Dante Y. Ceñido, and Rhamir C. Dalioan,** after having been duly sworn in accordance with law, hereby depose, state and declare that the judgment award in the above-entitled case is fully satisfied for and in consideration of the negotiated amount of **NINE MILLION PHILIPPINE PESOS (PHP 9,000,000.00)**, receipt in full of which, We hereby acknowledge from Philippine School of Business Administration.
>
> The aforestated negotiated amount is broken down as follows:

Dante Y. Ceñido	**PHP**	**2,395,886.00**
Nicanor B. Padilla, Jr.		**2,345,845.00**
Raul C. Addatu		**1,768,509.00**
Isidoro A. Ante		**1,192[,]942.00**
Rhamir C. Dalioan		**1,296,818.00**
TOTAL AMOUNT	**PHP**	**9,000,000.00**

> We declare that above-mentioned negotiated amount represents full and final settlement of all Our claims for remuneration, wages

[20] *Rollo* (G.R. Nos. 193438 & 194148), pp. 341-342. Emphases in the original.

and/or benefits of whatever nature from the said Respondents including those treated in the above-captioned case.

We further declare that We have no other claims, whatsoever, against the Respondents and hereby release and forever discharge said Respondents from any and all claims, demands, causes of action and/or liability of whatever nature arising out of our adjudged employment with them. No further claim, suit or proceeding of whatever nature may be filed in court or agency of the government against the herein Respondents or any person acting in their interest.

Acknowledging that the negotiated amount that We have received was paid pursuant to a judgment award, we undertake to comply with any tax obligation that might be due thereon, should there be any.

IN WITNESS WHEREOF, We, the recipients of the aforementioned negotiated amounts, have hereunto set Our hands on the Release, Waiver and Quitclaim this 23rd day of March, 2011, in Quezon City, Philippines, as follows:

Names and Signatures of Recipients		Valid I.D. No.	Date Issued	Place Issued
Dante Y. Ceñido	SGD.	1957662	9-5-09	Q.C.
Nicano[r] B. Padilla, Jr.	SGD.			
Raul C. Addatu	SGD.	97598	11-27-08	Q.C.
Isidoro A. Ante	SGD.			
Rhamir C. Dalioan	SGD.			

SUBS[C]RIBED AND SWORN to before me on the 23rd day of March, 2011 at Quezon City, Metro – Manila *(sic)*, Philippines, and the above enumerated Affiants exhibiting to me their valid I.Ds. with the respective dates and places of issues.

(SGD.)
ATTY. FE S. CELLAN
NOTARY PUBLIC
LABOR ARBITER

In an Addendum (to Release, Waiver and Quitclaim)[21] dated and stamp received by the Office of the Labor Arbiter, NLRC-NCR on the same day, March 23, 2011, herein respondents further manifested, *viz.*:

[21] *Id*. at 343-344. Emphases in the original.

We, complainants **Isidoro A. Ante, Raul C. Addatu, Nicanor B. Padilla, Jr., Dante Y. Ceñido and Rhamir C. Dalioan,** after having been duly sworn in accordance with law, hereby depose, state and declare that the negotiated amount of **NINE MILLION PHILIPPINE PESOS (PHP 9,000,000.00)**, in Philippine currency, which we received from Philippine School of Business Administration (**Manila**) and the Release, Waiver and Quitclaim that we executed in consideration thereof, **includes** the release, waiver and quitclaim of any and all claims that We may have against Philippine School of Business Administration, Inc. – **Quezon City**.

We declare that the above mentioned negotiated amount likewise represents full and final settlement of all our claims for remuneration, wages and/or benefits of whatever nature from Philippine School of Business Administration, Inc. – **Quezon City**. We hereby release and forever discharge said Philippine School of Business Administration, Inc. – **Quezon City,** its directors, officers, agents and/or employees from any and all claims, demands, causes of action and/or liability of whatever nature arising out of our employment with them. Henceforth, no further claim, suit or proceeding of whatever nature may be filed in court or agency of the government against said Philippine School of Business Administration, Inc. – **Quezon City** or any person acting in their interest.

IN WITNESS WHEREOF, We, the recipients of the nine million pesos (PHP 9,000,000.00) in Philippine currency of the aforementioned negotiated amounts have hereunto set Our hands on this **ADDENDUM** to Release, Waiver and Quitclaim this 23rd day of March, 2011, in Quezon City, Philippines, as follows:

Names and Signatures		Valid I.D. No.	Date Issued	Place Issued
Dante Y. Ceñido	SGD.	1957662	9-5-09	Q.C.
Nicano[r] B. Padilla, Jr.	SGD.			
Raul C. Addatu	SGD.	97598	11-27-08	Q.C.
Isidoro A. Ante	SGD.			
Rhamir C. Dalioan	SGD.			

SUBS[C]RIBED AND SWORN to before me on the 23rd day of March, 2011 at Quezon City, Metro – Manila *(sic)*, Philippines, and the above enumerated Affiants exhibiting to me their valid I.Ds. with the respective dates and places of issues.

(SGD.)
ATTY. FE S. CELLAN
NOTARY PUBLIC
LABOR ARBITER

In view of the execution of the above Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) on March 23, 2011, PSBA-Manila and Peralta filed a Manifestation with Motion to Dismiss[22] on April 14, 2011. They moved for the dismissal of the petitions docketed under G.R. Nos. 193438 and 194184 due to the execution of these documents.

On June 8, 2011, the Court, acting through the Third Division, issued a Resolution granting the Manifestation with Motion to Dismiss, *viz.*:

Let this case be considered ***CLOSED*** and ***TERMINATED*** and the parties be ***INFORMED*** accordingly.[23]

Despite the issuance by the Third Division of the June 8, 2011 Resolution which declared G.R. Nos. 193438 and 194184 closed and terminated, the Court's First Division issued a Resolution dated August 15, 2011 directing the First Division Clerk of Court to study whether the case at bar – docketed as G.R. No. 193451 – should be consolidated with G.R. Nos. 193438 and 194184, and to make a Report thereon within ten days from receipt of notice.[24] It was the First Division that issued the August 15, 2011 Resolution as this case was transferred from the Third to the First Division in a June 29, 2011 Resolution of this Court.[25]

In a Memorandum Report[26] dated August 24, 2011, the Acting Assistant Division Clerk of Court of the First Division made the following recommendation:

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[22] *Id*. at 338-340. Dated April 12, 2011.

[23] *Id*. at 346.

[24] *Rollo*, p. 261.

[25] *Id*. at 260.

[26] *Id*. at 263-264.

Both G.R. Nos. 193451 and 193438/194184 arose from the same antecedent facts. They also involve essentially the same parties, interrelated issues and similar subject matter.

However, x x x G.R. Nos. 193438/194184 were already closed and terminated. Hence, the consolidation of G.R. No. 193451 with G.R. Nos. 193438/194184 is no longer proper or necessary and will serve no useful purpose.

Accordingly, it is respectfully recommended that G.R. No. 193451 be not consolidated with G.R. Nos. 193438/194184.[27]

The instant case is a **separate appeal** filed by petitioner Magtalas seeking recourse from the appellate court's Decision over an appeal originating from the same complaint[28] filed by herein respondents against PSBA-Manila, Peralta and petitioner himself with the Labor Arbitration Branch of the NLRC under the consolidated cases of G.R. Nos. 193438 and 194184. While the instant petition was not consolidated with G.R. Nos. 193438 and 194184 – either on motion of both parties or by this Court *motu proprio* – a perusal of the Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) executed on March 23, 2011 between the same parties has clearly operated to **fully and finally settle** all of herein respondents' claims for remuneration, wages and/or benefits of whatever nature from the PSBA, its directors, officers, agents and/or employees from any and all claims, demands, causes of action and/or liability of whatever nature arising out of respondents' employment with them. The Addendum further stated that "x x x no further claim, suit or proceeding of whatever nature may be filed in court or agency of the government against said Philippine School of Business Administration, Inc. – **Quezon City** or any person acting in their interest."[29]

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[27] *Id*. at 264.

[28] Complaint for constructive illegal dismissal, non-payment of overtime pay, holiday pay, premium for holiday pay, vacation and sick leave pay, 13th month pay, separation pay and retirement benefits, as well as for moral, exemplary, actual, nominal and temperate damages and attorney's fees.

[29] *Supra* note 21, at 343.

In the case at bar, petitioner Magtalas was impleaded in the original complaint in his official capacity as then Review Director of the CPA Review Center of PSBA-Manila. The Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) with the negotiated amount of Nine Million Philippine Pesos (PHP 9,000,000.00) was signed by **all** five of the respondents in this case as full and final settlement of all of their claims for remuneration, wages and/or benefits of whatever nature from PSBA and its directors, officers, agents and/or employees – clearly including herein petitioner. The Release, Waiver, and Quitclaim and the Addendum (to Release, Waiver and Quitclaim) executed on March 23, 2011 has now therefore rendered this case moot and academic. To be sure, not one of the respondents herein has assailed the validity and enforceability of the two documents executed on March 23, 2011 – either in this petition or in the consolidated cases of G.R. Nos. 193438 and 194184. None of the respondents also filed any opposition when PSBA-Manila and Peralta filed a Manifestation with Motion to Dismiss on April 14, 2011 for the dismissal of the consolidated petitions docketed under G.R. Nos. 193438 and 194184 in view of the execution of both documents pertaining to the release, waiver and quitclaim. Further, there was no opposition from respondents when the Third Division of the Court issued a Resolution on June 8, 2011 granting such motion to dismiss.

WHEREFORE, in view of the foregoing considerations and the Resolution issued by the Court on June 8, 2011 which considered the consolidated cases under G.R. Nos. 193438 and 194184 closed and terminated, the present petition is **DENIED** on the ground of mootness.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 193468. January 28, 2015]

AL O. EYANA, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., ALAIN A. GARILLOS, CELEBRITY CRUISES, INC. (U.S.A.),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; SOCIAL WELFARE BENEFITS; DISABILITY BENEFITS; A PARTY ALLEGING A CRITICAL FACT MUST SUPPORT HIS ALLEGATION WITH SUBSTANTIAL EVIDENCE; THE EXISTENCE OF A COLLECTIVE BARGAINING AGREEMENT CANNOT BE MADE THE BASIS FOR THE AWARD OF DISABILITY COMPENSATION IN CASE AT BAR.—** It has been oft-repeated that "a party alleging a critical fact must support his allegation with substantial evidence," and "any decision based on unsubstantiated allegation cannot stand as it will offend due process." In the case at bar, while the petitioner based his claims for full disability benefits upon the CBA, he presented no more than two unauthenticated pages of the same. Hence, the CBA deserves no evidentiary weight and cannot be made as the basis for the award of disability compensation. Consequently, the first issue raised herein is rendered moot, leaving the Court to resolve the petition in the light of the provisions of the POEA SEC and relevant labor laws.

2. **ID.; ID.; ID.; ID.; FAILURE OF COMPANY-DESIGNATED PHYSICIAN TO ISSUE A DISABILITY RATING WITHIN THE PRESCRIBED PERIOD GIVES RISE TO A CONCLUSIVE PRESUMPTION THAT THE SEAFARER IS TOTALLY AND PERMANENTLY DISABLED; PRESENT IN CASE AT BAR.—** Similar to the circumstances obtained in *Kestrel*, the petitioner failed to assail the competence of the company-designated physicians, and seek the opinion of a third doctor mutually agreed upon by the parties. In *Kestrel* and the instant petition too, the disability assessment was made by the company-designated doctors after the lapse of

120 days from the seafarer's repatriation. Likewise, in both cases, the complaints were filed by the seafarers before October 6, 2008, the date of the promulgation of *Vergara v. Hammonia Maritime Services, Inc., et al.* Applying the doctrines enunciated in *Kestrel*, the Court finds that the petitioner is entitled to total and permanent disability benefits under the provisions of the POEA SEC. It bears stressing that the Court need not even delve into the merits of the assessments made by Dr. Alegre, on one hand, and Dr. Garduce, on the other. This proceeds from an unalterable fact that Dr. Alegre had made the disability assessment on January 20, 2007, or over five months from the petitioner's repatriation on August 17, 2006. Consequently, the rule on the 120-day period, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*, the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands. Hence, due to the failure of Dr. Alegre to issue a disability rating within the prescribed period, a conclusive presumption that the petitioner is totally and permanently disabled arose. As a result thereof, the petitioner is not legally compelled to observe the procedure laid down in Section 20-B(3) of the POEA SEC relative to the resort to a third doctor.

3. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PETITIONER IS ENTITLED TO ATTORNEY'S FEES NOT BECAUSE OF BAD FAITH BUT DUE TO THE PROVISION OF LAW.—** The petitioner is entitled to attorney's fees pursuant to Article 2208(8) of the Civil Code. The Court, however, notes that the respondents provided the petitioner with medical treatment and offered to pay him disability benefits, albeit in the reduced amount. In other words, the acts of the respondents did not evince bad faith. The respondents did not completely shirk from their duties to the petitioner. Although the petitioner was still thus compelled to litigate to be entitled to total and permanent disability compensation, the Court finds the award of attorney's fees in the amount of US$1,000.00 as reasonable.

4. **MERCANTILE LAW; CORPORATION CODE; THE OFFICERS AND MEMBERS OF A CORPORATION ARE NOT PERSONALLY LIABLE FOR ACTS DONE IN THE PERFORMANCE OF THEIR DUTIES; APPLICATION IN CASE AT BAR.—** As a general rule, the officers and members of a corporation are not personally liable for acts done in the

performance of their duties. "In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities." In the instant petition, there was neither an allegation nor a proof offered to establish that Garillos, as PTCI's crewing manager and official representative, had acted beyond the scope of his authority or with malice. The general rule thus applies and there is no ground to hold him personally liable for the monetary awards granted to the petitioner.

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.
Manalo Jocson and Enriquez Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

The instant petition for review on *certiorari*[1] assails the Decision[2] dated March 22, 2010 and Resolution[3] dated August 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108483. The CA affirmed the Decision[4] of the National Labor Relations Commission (NLRC) dated November 28, 2008, which declared that Al O. Eyana (petitioner) is entitled to an award of disability compensation equivalent to Grade Eight under the Philippine Overseas Employment Agency (POEA) Standard Employment Contract (SEC). The NLRC reversed the labor arbiter's (LA) earlier decision,[5] which awarded to the petitioner US$80,000.00 as total and permanent disability benefits, and US$8,000.00 as attorney's fees.

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[1] *Rollo,* pp. 10-24.

[2] Penned by Associate Justice Ruben C. Ayson, with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro concurring; CA *rollo*, pp. 155-171.

[3] *Id*. at 200-201.

[4] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan concurring; *id*. at 27-36.

[5] Issued by LA Romelita N. Rioflorido; *id*. at 18-25A.

Antecedents

Respondent Philippine Transmarine Carriers, Inc. (PTCI) is a local manning agency, with Alain A. Garillos (Garillos) as its crewing manager and official representative.

PTCI, for and on behalf of its foreign principal, Celebrity Cruises, Inc. (CCI), hired the petitioner to assume the position of a utility cleaner on board *M/V Century.* The petitioner then joined the ship on April 15, 2006. His contract covered a period of eight months and his basic monthly salary was US$267.00. His tasks were predominantly manual in nature, which involved lifting, carrying, loading, transporting and arranging food supplies, and floor cleaning.[6]

On August 2, 2006, the petitioner felt a sudden pain in his back after lifting a 30-kilo block of cheese from the freezer shelf. He was no longer able to carry the cheese to the kitchen. He reported the incident to his superior.[7]

The petitioner was confined in a hospital in Oslo, Norway from August 4 to 16, 2006. He was medically repatriated to the Philippines on August 17, 2006.[8]

PTCI immediately referred the petitioner to Dr. Natalio G. Alegre II (Dr. Alegre) for treatment. The initial consultation was on August 18, 2006. Dr. Alegre noted that the petitioner was (a) suffering from severe low back pains, (b) experiencing numbness and weakness in his right lower leg, and (c) having difficulty bending and sitting. The former was, thus, advised to undergo physical therapy thrice a week.[9]

The petitioner thereafter consulted Dr. Alegre eight more times from August 28, 2006 up to January 26, 2007. He continued with physical therapy and was prescribed medications.[10]

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[6] *Id*. at 156-157; *rollo*, p. 13.

[7] CA *rollo*, p. 157.

[8] *Id*. at 18-19.

[9] *Rollo*, p. 96.

[10] *Id*. at 97-104.

On October 23, 2006, Dr. Alegre reported that the Magnetic Resonance Imaging scan of the petitioner's lumbosacral spine showed "disk desiccation L4L5 and L5S1 with left posterolateral disk herniations and nerve root compression." Since the petitioner was hesitant to undergo surgery, Dr. Alegre recommended the administration of epidural steroid injection to decrease the pain and swelling, and the continuation of physical therapy.[11]

On January 20, 2007, Dr. Alegre informed PTCI that the petitioner still suffered from persistent back pains and restricted truncal mobility. Since the petitioner was still young, "conservative management with physical therapy" was recommended. The petitioner was then given a "Disability Grade of 8 (Chest-Trunk-Spine # 5, moderate rigidity or 2/3 loss of motion or lifting power of the trunk)."[12]

The petitioner's last consultation with Dr. Alegre was on January 26, 2007. The former manifested his preference for the continuation of physical therapy and once again refused the offer of surgical intervention.[13]

On June 6, 2007, the petitioner sought the opinion of Dr. Venancio P. Garduce, Jr. (Dr. Garduce), an orthopedic surgeon. The medical certificate signed by the latter indicated that the petitioner had (a) nerve root compression at L4-L5 and L5-S1; (b) numbness and sensory deficits of 40% with weakness of the left big toe extension; and (c) limited range of motion of the back. Dr. Garduce concluded that the petitioner had a Disability Grade of One and was thus unfit for sea duty.[14]

On June 7, 2007, the petitioner filed before the NLRC a complaint[15] for disability benefits, medical reimbursements, damages and attorney's fees against PTCI, Garillos and CCI (respondents).

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[11] *Id*. at 102.

[12] *Id*. at 105.

[13] *Id*. at 104.

[14] *Id*. at 106.

[15] CA *rollo*, pp. 17, 158.

Ruling of the LA

On December 17, 2007, the LA rendered a Decision[16] awarding to the petitioner the amounts of US$80,000.00 as total and permanent disability benefits, and US$8,000.00 as attorney's fees. The LA ruled that the provisions of the FIT-CISL-ITF CBA (CBA) which adopted Article 12 of the ITF Cruise Ship Model Agreement covering the petitioner's vessel of employment were applicable.[17] The said article, in part, provides that:

> Regardless of the degree of disability[,] an injury or illness which results in loss of profession will entitle the Seafarer to the full amount of compensation, USD eighty thousand (80,000) for ratings, (Groups B, C, & D) x x x. For the purposes of this Article, loss of profession means when the physical condition of the Seafarer prevents a return to sea service, under applicable national and international standards or when it is otherwise clear that the Seafarer's condition will adversely prevent the Seafarer's future of comparable employment on board ships.[18]

The LA found Dr. Garduce's opinion as credible. The LA likewise declared that even if the Disability Grade of Eight assessed by Dr. Alegre would be considered instead, it cannot alter the fact that the petitioner's medical condition was permanent thereby resulting in the loss of his profession as a seaman. Further, the petitioner was unable to perform his customary job for more than 120 days, hence, under the law, he should be considered as permanently and totally disabled.[19]

Ruling of the NLRC

The respondents assailed the LA decision before the NLRC. The dispositive portion of the NLRC Decision[20] dated November 28, 2008 reads as follows:

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[16] *Id.* at 18-25A.

[17] *Id.* at 21.

[18] *Id.* at 22.

[19] *Id.* at 22-23.

[20] *Id.* at 27-36.

WHEREFORE, premises considered, the decision under review is hereby, REVERSED and SET ASIDE, and another entered, DISMISSING the cause of action for payment of higher disability benefits.

According[ly], [the petitioner] is declared entitled to an award of disability compensation equivalent to GRADE EIGHT (8) under the [POEA-SEC].

SO ORDERED.[21]

The NLRC explained that:

Records show that [Dr. Alegre] personally examined the [petitioner] starting August 18, 2006. From said date until January 26, 2007, [the petitioner] underwent medical examination for no less than eight (8) times x x x. Notably, on two occasions, Dr. Alegre suggested that [the petitioner] undergo operation. [The petitioner] himself refused but instead opted for epidural steroid injection and physical therapy x x x. Having failed to receive a higher disability rating, [the petitioner] waited [for] over four (4) months before he sought a second opinion which was based on a mere single consultation that, in turn, produced a mere handwritten diagnosis. From these established facts, even granting that the disability assessment should have been as what [the petitioner's] private physician had determined, his conduct is considered as a supervening cause that could account for such disability, noting further that the second medical opinion was obtained several months after the company-designated physician had issued a disability rating. These circumstances warrant according to the medical opinion of [the petitioner's] private physician with such nil significance.

Attendant facts not only render an inherent weakness in [the petitioner's] evidence. They fail to overcome the corresponding probative weight and credence being ascribed to the declaration of the company-designated physician which had been issued pursuant to the conditions stated in the [POEA SEC]. Thusly, and as ruled in the case of *Cadornigara v. Amethyst Shipping Co., Inc., et al.*, G.R. No. 158073, November 23, 2007, while the certification of the company physician may be contested, the seafarer must indicate facts or evidence on record to contradict such finding. x x x [The

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[21] *Id*. at 35.

petitioner] having entirely missed pointing to any circumstance that would have reasonably established fraud or misrepresentation on the part of the company-designated physician, We are therefore without any other recourse but to render due adherence to his findings and conclusions.[22]

On February 13, 2009, the NLRC denied the respondents' motion for reconsideration.[23]

Ruling of the CA

The respondents thereafter filed a Petition for *Certiorari*,[24] which the CA dismissed through the herein assailed decision and resolution. The CA declared that:

> The Court notes that Section 20(B) of the employment contract states that it is the company-designated physician who determines a seafarer's fitness to work or his degree of disability. Nonetheless, a claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.
>
> It is noted that petitioner took four (4) months before disputing the finding of Dr. Alegre by consulting a second opinion of his physician of choice, whose only consultation with him is recorded by a handwritten diagnosis dated June 6, 2007, a day before he filed a complaint for disability benefits. x x x.
>
> x x x x x x x x x
>
> As the Supreme Court observed in *Sarocam v. Interorient Maritime Ent. Inc.,* it makes no sense to compare the certification of a company-designated physician with that of an employee-appointed physician if the former is dated seven to eight months earlier than the latter — there would be no basis for comparison at all.
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> In ***Maunlad Transport, Inc. vs. Manigo***, where the Supreme Court took note of the doctrines laid down in ***Cadornigara v. NLRC*** and

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[22] *Id.* at 33-35.

[23] *Id.* at 37-39.

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

Sarocam v. Interorient Maritime Ent., Inc., which We hold to be the more applicable rule in the instant case, wherein the Court held that an assessment of a private doctor consulted by the claimant six (6) months after he was declared "fit to work" by the company-designated physician in ***Cadornigara*** and seven (7) to eight (8) months in ***Sarocam***, has no evidentiary value, for the claimant's health condition may have drastically changed in the interregnum.

Following the foregoing analyses in ***Cadornigara*** and ***Sarocam***, the necessary conclusion in this case would have to be that Dr. Alegre's (the company physician) diagnosis and recommendation has more evidentiary weight and should therefore prevail over that of Dr. Garduce. In the absence of bad faith, Dr. Alegre's findings were binding on the petitioner, such findings being based on the petitioner's extensive and actual medical history and treatment.

Moreover, the records lack competent showing of the extent of the medical treatment that the private doctor gave to the petitioner. In contrast, Dr. Alegre's extensive medical treatment that enabled him to make a final diagnosis on the degree of the petitioner's disability was amply demonstrated. Thus, between the certification issued by the company[-]designated physician and the certification issued by the private doctor, We would lend more credence to the certification issued by the company[-]designated physician because it was done in the regular performance of his duties as company physician and who consistently examined complainant's health condition. We cannot simply brush aside said certification in the absence of solid proof that it was issued with grave abuse of authority of the company physician. This was what respondent NLRC precisely considered in coming out with its reversal decision. In doing so, it may not be said that it gravely abused its discretion.

While the Court may agree with the petitioner that the [POEA SEC] for Seamen is designed primarily for the protection and benefit of Filipino seamen in the pursuit of the employment on board ocean-going vessels and its provisions must, therefore be construed and applied fairly, reasonably and liberally in their favor, We must also emphasize that the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers, nor a means to prevent the court from sustaining the employer when it is in the right.[25] (Citations omitted)

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[25] *Id*. at 166-170.

Issues

This Court is now called upon to resolve the issues of whether or not the CA and the NLRC erred in not considering the following:

(a) provisions of the CBA which provide full compensation for loss of profession regardless of the degree of disability;[26] and

(b) settled jurisprudence on seafarers' claims declaring that entitlement to full disability compensation is based on the loss of earning capacity and not on medical significance.[27]

The petitioner claims that while the respondents never controverted the existence of the CBA, which was an addendum to the POEA SEC executed between the parties in this case, the NLRC and the CA failed to discuss the provisions therein in their respective decisions. Further, Article 12 of the CBA provides that regardless of the disability grading given to the petitioner, he should be entitled to a compensation of US$80,000.00 as a result of the loss of his profession. The petitioner also points out that from his repatriation on August 18, 2006 up to the time the instant petition was filed in 2009, he had remained unfit to work as a seaman after losing two-thirds of his trunk's lifting power. Anent the petitioner's alleged refusal to undergo surgery, he asserts that he was not solely at fault as Dr. Alegre himself had adopted the orthopedic recommendation of conservative management with physical therapy.[28]

The petitioner also reiterates that permanent and total disability does not mean absolute helplessness, but mere inability to do substantially all material acts necessary for the pursuit of any occupation for remuneration in substantially customary and usual

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[26] *Rollo*, p. 15.

[27] *Id*. at 20.

[28] *Id*. at 16-19.

manner. Because of his back injury resulting from the accident, he is rendered permanently unfit for sea service.[29]

In their Comment,[30] the respondents argue that Department Order No. 4 and Memorandum Circular No. 9, series of 2000, otherwise known as the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, shall apply since the employment contract executed between the parties expressly stipulated so. Under Section 32 of the POEA SEC, Grade 8 disability entitles the seafarer to a compensation equivalent to US$16,795.00 or 33.59% of US$50,000.00.[31]

Further, the petitioner belatedly sought the opinion of Dr. Garduce four months after Dr. Alegre had made a disability assessment. The petitioner did so as a mere afterthought.[32] Besides, while the findings of Dr. Alegre may be contested, the petitioner should have indicated facts or evidence in the records to refute the same. The petitioner failed in this respect. Thus, Dr. Garduce's medical opinion, which was arrived at after a day's observation, cannot override the careful assessment of Dr. Alegre, who had monitored the petitioner's condition in a span of six months.[33]

Ruling of the Court

The instant petition is partially meritorious.

There is no dispute that the petitioner's injury was work-related and that he is entitled to disability compensation. The questions now posed before this Court essentially relate to what are the applicable provisions to determine the (a) petitioner's degree of disability, and (b) amount of compensation he is entitled to.

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

[30] *Id.* at 84-94.

[31] *Id.* at 85-86.

[32] *Id.* at 86, 90.

[33] *Id.* at 90.

The CBA's existence and the applicability of its provisions to the instant petition have not been established.

It has been oft-repeated that "a party alleging a critical fact must support his allegation with substantial evidence," and "any decision based on unsubstantiated allegation cannot stand as it will offend due process."[34]

In the case at bar, while the petitioner based his claims for full disability benefits upon the CBA, he presented no more than two unauthenticated pages of the same.[35] Hence, the CBA deserves no evidentiary weight and cannot be made as the basis for the award of disability compensation. Consequently, the first issue[36] raised herein is rendered moot, leaving the Court to resolve the petition in the light of the provisions of the POEA SEC and relevant labor laws.

The POEA SEC governs. Under Section 32 thereof, the petitioner is entitled to a total and permanent disability compensation of US$60,000.00.

In *Kestrel Shipping Co., Inc. v. Munar*,[37] likewise involving a seafarer who had sustained a spinal injury and had lost two-thirds of his trunk's lifting power, the Court is emphatic that:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, <u>if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would</u>

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[34] Please see *Oriental Shipmanagement Co., Inc. v. Nazal*, G.R. No. 177103, June 3, 2013, 697 SCRA 51, 61, citing *UST Faculty Union v. University of Sto. Tomas, et al.*, 602 Phil. 1016, 1025 (2009).

[35] CA *rollo*, pp. 56-57.

[36] *Rollo*, p. 15.

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

incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. x x x.

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

x x x x x x x x x

> x x x Section 29 of the 1996 POEA SEC itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."
>
> Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x.

In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the [Amended Rules on Employee Compensation] in interpreting in holding that: (a) the 120 days provided under Section 20-B(3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties. Quoted below are the relevant portions of this Court's Decision dated October 6, 2008:

> x x x [T]he POEA [SEC] provides its own system of disability compensation that approximates (and even exceeds) the benefits

provided under Philippine law. The standard terms agreed upon, as above pointed out, are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

x x x x x x x x x

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA [SEC] and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

x x x x x x x x x

As we outlined above, 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. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence,

distinctions and consequences, becomes a surplusage that serves no useful purpose.

Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises. On the other hand, if the company-designated physician declares the seaman fit to work within the said periods, such declaration should be respected unless the physician chosen by the seaman and the doctor selected by both the seaman and his employer declare otherwise. As provided under Section 20-B(3) of the POEA-SEC, a seafarer may consult another doctor and in case the latter's findings differ from those of the company-designated physician, the opinion of a third doctor chosen by both parties may be secured and such shall be final and binding. The same procedure should be observed in case a seafarer, believing that he is totally and permanently disabled, disagrees with the declaration of the company-designated physician that he is partially and permanently disabled.

In *Vergara*, as between the determinations made by the company-designated physician and the doctor appointed by the seaman, the former should prevail absent any indication that the above procedure was complied with:

> The POEA [SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x.

In this case, the following are undisputed: (a) when Munar filed a complaint for total and permanent disability benefits on April 17, 2007, 181 days had lapsed from the time he signed-off from M/V Southern Unity on October 18, 2006; (b) Dr. Chua issued a disability grading on May 3, 2007 or after the lapse of 197 days; and (c) Munar secured the opinion of Dr. Chiu on May 21, 2007; (d) no third doctor was consulted by the parties; and (e) Munar did not question the competence and skill of the company-designated physicians and their familiarity with his medical condition.

It may be argued that these provide sufficient grounds for the dismissal of Munar's complaint. Considering that the 240-day period had not yet lapsed when the NLRC was asked to intervene, Munar's complaint is premature and no cause of action for total and permanent disability benefits had set in. While beyond the 120-day period, Dr. Chua's medical report dated May 3, 2007 was issued within the 240-day period. Moreover, Munar did not contest Dr. Chua's findings using the procedure outlined under Section 20-B(3) of the POEA-SEC. For being Munar's attending physicians from the time he was repatriated and given their specialization in spine injuries, the findings of Dr. Periquet and Dr. Lim constitute sufficient bases for Dr. Chua's disability grading. As Munar did not allege, much less, prove the contrary, there exists no reason why Dr. Chiu's assessment should be preferred over that of Dr. Chua.

It must be noted, however, that when Munar filed his complaint, Dr. Chua had not yet determined the nature and extent of Munar's disability. Also, Munar was still undergoing physical therapy and his spine injury had yet been fully addressed. Furthermore, when Munar filed a claim for total and permanent disability benefits, more than 120 days had gone by and the prevailing rule then was that enunciated by this Court in *Crystal Shipping, Inc. v. Natividad* that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. Particularly:

> **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body**. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.

> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.
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> x x x x x x x x x
>
> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. **It is of no consequence that respondent was cured after a couple of years. <u>The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability</u>**. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.

Consequently, that <u>after the expiration of the 120-day period, Dr. Chua had not yet made any declaration as to Munar's fitness to work and Munar had not yet fully recovered and was still incapacitated to work sufficed to entitle the latter to total and permanent disability benefits</u>.

<u>In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B(3) of the POEA-SEC</u>. <u>A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods</u>. <u>Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent</u>.

This Court's pronouncements in *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping* such that a seafarer is immediately catapulted into filing a complaint for total and permanent disability benefits after the expiration of 120 days from the time he signed off from the vessel to which he was assigned. Particularly, a seafarer's inability to work and the failure of the company-designated physician to determine fitness or unfitness to work despite the lapse of 120 days will not automatically bring about a shift in the seafarer's state from total and temporary to total and permanent, considering that the condition of total and temporary disability may be extended up to a maximum of 240 days.

Nonetheless, *Vergara* was promulgated on October 6, 2008, or more than two (2) years from the time Munar filed his complaint and observance of the principle of prospectivity dictates that *Vergara* should not operate to strip Munar of his cause of action for total and permanent disability that had already accrued as a result of his continued inability to perform his customary work and the failure of the company-designated physician to issue a final assessment.[38] (Citations omitted, emphases in the original and underscoring ours)

Similar to the circumstances obtained in *Kestrel*, the petitioner failed to assail the competence of the company-designated physicians, and seek the opinion of a third doctor mutually agreed upon by the parties. In *Kestrel* and the instant petition too, the disability assessment was made by the company-designated doctors after the lapse of 120 days from the seafarer's repatriation. Likewise, in both cases, the complaints were filed by the seafarers before October 6, 2008, the date of the promulgation of *Vergara v. Hammonia Maritime Services, Inc., et al.*[39]

Applying the doctrines enunciated in *Kestrel*, the Court finds that the petitioner is entitled to total and permanent disability benefits under the provisions of the POEA SEC. It bears stressing that the Court need not even delve into the merits of the assessments made by Dr. Alegre, on one hand, and Dr. Garduce, on the other. This proceeds from an unalterable fact that Dr.

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[38] *Id.* at 809-818.

[39] 588 Phil. 895 (2008).

Alegre had made the disability assessment on January 20, 2007, or over five months from the petitioner's repatriation on August 17, 2006. Consequently, the rule on the 120-day period, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*,[40] the doctrine then prevailing before the promulgation of *Vergara* on October 6, 2008, stands. Hence, due to the failure of Dr. Alegre to issue a disability rating within the prescribed period, a conclusive presumption that the petitioner is totally and permanently disabled arose. As a result thereof, the petitioner is not legally compelled to observe the procedure laid down in Section 20-B(3) of the POEA SEC relative to the resort to a third doctor.

As discussed earlier, the Court need not delve into the merits of the disability assessments made by Dr. Alegre and Dr. Garduce. However, it is worth noting that on January 20, 2007, Dr. Alegre informed PTCI that the petitioner was still suffering from persistent back pains. Thus, the Gabapentin dose prescribed to the petitioner was increased to 600 milligrams per day and physical therapy was continued.[41]

Gabapentin tablets are used to treat long lasting pain caused by damage to the nerves. A variety of different diseases can cause peripheral (primarily occurring in the legs and/or arms) neuropathic pain, such as diabetes or shingles. Pain sensations may be described as hot, burning, throbbing, shooting, stabbing, sharp, cramping, aching, tingling, numbness, pins and needles, etc.[42]

In *Seagull Maritime Corporation v. Dee*,[43] the Court declared that:

Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature

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[40] 510 Phil. 332 (2005).

[41] *Rollo*, p. 105.

[42] <http://www.drugs.com/uk/pdf/leaflet/359984.pdf> (visited January 22, 2015).

[43] 548 Phil. 660 (2007).

that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do. It does not mean state of absolute helplessness but *inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain* and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.

Although private respondent's injury was undeniably confined to his left foot only, we cannot close our eyes, as petitioners would like us to, to the inescapable impact of private respondent's injury on his capacity to work as a seaman. In their desire to escape liability from private respondent's rightful claim, petitioners denigrated the fact that even if private respondent insists on continuing to work as a seaman, no profit minded employer will hire him. His injury erased all these possibilities.[44] (Citation omitted, italics in the original and underscoring ours)

Further, *Wallem Maritime Services, Inc. v. Tanawan*[45] unequivocally reiterated that:

What clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation).[46] (Citations omitted)

In the instant petition, Dr. Alegre's January 20, 2007 report[47] addressed to PTCI clearly indicated that the petitioner's persistent back pains remained unresolved. Hence, the continuation of physical therapy and an increased Gabapentin dose were recommended. The Court cannot disregard the fact that the petitioner was a utility cleaner before he was injured. His tasks in the ship were predominantly manual in nature involving a lot

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[44] *Id*. at 671.

[45] G.R. No. 160444, August 29, 2012, 679 SCRA 255.

[46] *Id*. at 268.

[47] *Rollo*, p. 105.

of moving, lifting and bending. At the time Dr. Alegre belatedly issued the disability assessment, the petitioner could not revert back to his customary gainful occupation without subjecting himself to serious discomfort and pain.

Further, the Court disagrees with the NLRC which found fault on the part of the petitioner in refusing to undergo surgery as recommended by Dr. Alegre. Records show that the petitioner underwent physical therapy. At the time Dr. Alegre made the disability assessment on January 20, 2007, he still presented physical therapy as an option. Again, the Court quotes:

> As [the petitioner] is still young, conservative management with physical therapy has been recommended by Orthopedics.[48]

The petitioner cannot thus be faulted that he opted for physical therapy instead of surgery. If indeed surgery was the only way for the petitioner to be able to fully recover from his injury, he should have been categorically informed of such fact and warned of the consequences of his choice. The petitioner did not refuse treatment. He just availed of an option presented to him. Besides, even if he underwent surgery, there is likewise no assurance of full recovery.

The Court also notes that nowhere is it shown in the records that the petitioner was re-employed as a utility cleaner by PTCI or by any other manning agency from the time of his repatriation on August 17, 2006 until the filing of the instant petition in 2009. This, to the Court, is an eloquent proof of his permanent disability.[49]

In sum, the Court finds the petitioner entitled to total and permanent disability compensation. As to the amount, the Schedule of Disability Allowances found in Section 32 of the POEA SEC is applicable. Under the said section, a seafarer given a Grade 1 Disability assessment is entitled to US$60,000.00 (US$50,000.00 x 120%).

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[48] *Id.*

[49] *Maersk Filipinas Crewing, Inc./Maersk Services Ltd. v. Mesina*, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 608.

The petitioner is entitled to attorney's fees.

The petitioner is entitled to attorney's fees pursuant to Article 2208(8)[50] of the Civil Code.[51] The Court, however, notes that the respondents provided the petitioner with medical treatment and offered to pay him disability benefits, albeit in the reduced amount. In other words, the acts of the respondents did not evince bad faith. The respondents did not completely shirk from their duties to the petitioner. Although the petitioner was still thus compelled to litigate to be entitled to total and permanent disability compensation, the Court finds the award of attorney's fees in the amount of US$1,000.00 as reasonable.[52]

Respondent Garillos is not personally liable for the monetary awards granted to the petitioner.

As a general rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties.[53]

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

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

x x x x x x x x x

[51] Please see *Leonis Navigation Co., Inc., et al. v. Villamater and/or The Heirs of the Late Catalino U. Villamater, et al.*, 628 Phil. 81, 100 (2010).

[52] Please see *NFD International Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*, 646 Phil. 244, 265 (2010).

[53] *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224,* G.R. No. 194795, June 13, 2012, 672 SCRA 562, 570.

"In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities."[54]

In the instant petition, there was neither an allegation nor a proof offered to establish that Garillos, as PTCI's crewing manager and official representative, had acted beyond the scope of his authority or with malice. The general rule thus applies and there is no ground to hold him personally liable for the monetary awards granted to the petitioner.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Decision dated March 22, 2010 and Resolution dated August 13, 2010 of the Court of Appeals in CA-G.R. SP No. 108483 are hereby **SET ASIDE**. The respondents, Philippine Transmarine Carriers, Inc. and Celebrity Cruises, Inc. are hereby held jointly and severally liable to the petitioner, **AL O. EYANA,** for the amounts of (a) US$60,000.00 as total and permanent disability allowance, and (b) US$1,000.00 as attorney's fees, at the prevailing rate of exchange at the time of payment. An interest of six percent (6%) *per annum* is likewise imposed upon the total monetary award reckoned from the date of finality of this Decision until full satisfaction thereof.[55]

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr., and *Jardeleza, JJ.,* concur.

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[54] *Id*. at 573, citing *Pantranco Employees Ass'n. (PEA-PTGWO), et al. v. NLRC, et al.*, 600 Phil. 645, 663 (2009).

[55] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

SPECIAL THIRD DIVISION

[G.R. No. 195580. January 28, 2015]

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and McARTHUR MINING, INC., *petitioners, vs.* **REDMONT CONSOLIDATED MINES CORP.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; THE GRANDFATHER RULE; THE USE OF THE GRANDFATHER RULE AS A "SUPPLEMENT" TO THE CONTROL TEST IS NOT PROSCRIBED BY THE CONSTITUTION OR THE MINING ACT OF 1995; SUSTAINED.—** Nowhere in that disposition did the Court foreclose the application of the Control Test in determining which corporations may be considered as Philippine nationals. Instead, to borrow Justice Leonen's term, the Court used the Grandfather Rule as a "supplement" to the Control Test so that the intent underlying the averted Sec.2, Art. XII of the Constitution be given effect. The following excerpts of the April 21, 2014 Decision cannot be clearer: In ending, **the "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation**, within the ambit of Sec. 2, Art. XII of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. **When in the mind of the Court, there is doubt, based on the attendant facts and circumstances of the case**, in the 60-40 Filipino equity ownership in the corporation, **then it may apply the "grandfather rule."** With that, the use of the Grandfather Rule as a "supplement" to the Control Test is not proscribed by the Constitution or the Philippine Mining Act of 1995.

2. **ID.; ID.; ID.; THE GRANDFATHER RULE IMPLEMENTS THE FILIPINO EQUITY REQUIREMENT IN THE CONSTITUTION; EXPLAINED.—** To reiterate, Sec. 2, Art. XII of the Constitution reserves the exploration, development,

and utilization of natural resources to Filipino citizens and "corporations or associations at least sixty *per centum* of whose capital is owned by such citizens." Similarly, Section 3(aq) of the Philippine Mining Act of 1995 considers a "corporation x x x registered in accordance with law at least sixty per cent of the capital of which is owned by citizens of the Philippines" as a person qualified to undertake a mining operation. Consistent with this objective, the Grandfather Rule was originally conceived to look into the *citizenship* of the individuals who ultimately own and control the shares of stock of a corporation for purposes of determining compliance with the constitutional requirement of Filipino ownership. It cannot, therefore, be denied that the framers of the Constitution have not foreclosed the Grandfather Rule as a tool in verifying the nationality of corporations for purposes of ascertaining their right to participate in nationalized or partly nationalized activities. x x x As further defined by Dean Cesar Villanueva, the Grandfather Rule is "**the method by which the percentage of Filipino equity in a corporation** engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, **is computed, in cases where corporate shareholders are present, by *attributing* the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder**." Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined. x x x As shown by the quoted legislative enactments, administrative rulings, opinions, and this Court's decisions, the Grandfather Rule not only finds basis, but more importantly, it implements the Filipino equity requirement, in the Constitution.

3. **ID.; ID.; ID.; EVEN IF THE 60-40 FILIPINO TO FOREIGN EQUITY RATIO IS APPARENTLY MET, A RESORT TO THE GRANDFATHER RULE IS NECESSARY IF DOUBT EXISTS AS TO THE *LOCUS* OF THE "BENEFICIAL OWNERSHIP" AND "CONTROL"; APPLICATION IN CASE AT BAR.— The Control Test and the Grandfather Rule** are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, these methods **can, if appropriate, be used cumulatively in the determination of the ownership and control of**

corporations engaged in fully or partly nationalized activities, as the mining operation involved in this case or the operation of public utilities as in *Gamboa* or *Bayantel*. The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it is only when the Control Test is first complied with that the Grandfather Rule may be applied.** Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears. On the other hand, **a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation *if there is no doubt* as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule.** As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is necessary *if doubt exists* as to the *locus* of the "beneficial ownership" and "control."** In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary. As explained in the April 21, 2012 Decision, the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, **"doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders**.

4. **ID.; ID.; ANTI-DUMMY LAW; IN RELATION TO THE MINIMUM FILIPINO EQUITY REQUIREMENT IN THE CONSTITUTION, SIGNIFICANT INDICATORS OF THE DUMMY STATUS HAVE BEEN RECOGNIZED;**

ENUMERATION.— As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the Constitution, "significant indicators of the dummy status" have been recognized in view of reports "that some Filipino investors or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors" specifically in joint ventures for national resource exploitation. These indicators are: 1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner; 2. That the foreign investors undertake to provide practically all the technological support for the joint venture; 3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.

5. **ID.; EXECUTIVE DEPARTMENT ; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR); PANEL OF ARBITRATORS (POA); THE POA JURISDICTION TO MAKE PRELIMINARY FINDING OF THE REQUIRED NATIONALITY OF THE CORPORATE APPLICANT IN ORDER TO DETERMINE ITS RIGHT TO A MINING AREA OR A MINERAL AGREEMENT, SUSTAINED.—** The April 21, 2014 Decision did not dilute, much less overturn, this Court's pronouncements in either *Gonzales* or *Philex Mining* that POA's jurisdiction "is limited only to mining disputes which raise questions of fact," and not judicial questions cognizable by regular courts of justice. However, to properly recognize and give effect to the jurisdiction vested in the POA by Section 77 of the Philippine Mining Act of 1995, and in parallel with this Court's ruling in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*, the Court has recognized in its Decision that in resolving disputes "involving rights to mining areas" and "involving mineral agreements or permits," the POA has jurisdiction to make a *preliminary* finding of the required nationality of the corporate applicant in order to determine its right to a mining area or a mineral agreement. x x x The present case arose from petitioners' MPSA applications, in which they asserted their respective rights to the mining areas each applied for. Since respondent Redmont, itself an applicant for exploration permits over the same mining areas, filed

petitions for the denial of petitioners' applications, it should be clear that there exists a controversy between the parties and it is POA's jurisdiction to resolve the said dispute. POA's ruling on Redmont's assertion that petitioners are foreign corporations not entitled to MPSA is but a necessary incident of its disposition of the mining dispute presented before it, which is whether the petitioners are entitled to MPSAs. Indeed, as the POA has jurisdiction to entertain "disputes involving rights to mining areas," it necessarily follows that the POA likewise wields the authority to pass upon the nationality issue involving petitioners, since the resolution of this issue is essential and indispensable in the resolution of the main issue, *i.e.,* the determination of the petitioners' right to the mining areas through MPSAs.

LEONEN, *J., dissenting opinion*:

1. **POLITICAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR); PANEL OF ARBITRATORS (POA); THE CRUX OF THE CASE WHICH PERTAINS TO THE LEGAL STATUS OF PETITIONERS AND THE RIGHTS OR INHIBITIONS ACCRUING TO THEM ON ACCOUNT OF THEIR STATUS IS BEYOND THE COMPETENCE OF THE DENR PANEL OF ARBITRATORS; CASE AT BAR.—** The jurisdiction of the DENR Panel of Arbitrators is spelled out in Section 77 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Mining Act"): x x x The April 21, 2014 Decision sustained the jurisdiction of the DENR Panel of Arbitrators, relying on pronouncements made in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.* which construed the phrase "disputes involving rights to mining areas" as referring "to any adverse claim, protest, or opposition to an application for mineral agreement." However, the Decision interpreted Section 77 of the Mining Act in a manner that runs afoul of this court's pronouncements in its Decision penned by Associate Justice Dante Tinga in *Gonzales v. Climax Mining Ltd.* and in its Decision penned by Associate Justice J.B.L. Reyes in *Philex Mining Corp. v. Zaldivia.* x x x The DENR Panel of Arbitrators, as its name denotes, is an arbitral body. It is not a court of law. Its competence rests in its capacity to resolve factual issues arising between parties with competing mining claims

and requiring the application of technical expertise. In this case, Redmont has not even shown that it has a competing mining claim. It has asked only that petitioners be declared as not qualified to enter into MPSAs. By sustaining the jurisdiction of the DENR Panel of Arbitrators, the majority effectively diminishes (if not totally abandons) the distinction made in *Gonzales* and *Philex* between "mining disputes" and "judicial questions." Per *Gonzales* and *Philex,* judicial questions are cognizable only by courts of justice, not by the DENR Panel of Arbitrators. x x x The crux of this case relates to a matter that is beyond the competence of the DENR Panel of Arbitrators. It does not pertain to the intricacies and specifications of mining operations. Rather, it pertains to the legal status of petitioners and the rights or inhibitions accruing to them on account of their status. It pertains to a judicial question.

2. **ID.; NATIONAL ECONOMY AND PATRIMONY; THE GRANDFATHER RULE DISTINGUISHED FROM THE CONTROL TEST; THE CONTROL TEST, RATHER THAN THE GRANDFATHER RULE, FINDS PRIORITY APPLICATION IN RECKONING THE NATIONALITIES OF CORPORATIONS ENGAGED IN NATIONALIZED ECONOMIC ACTIVITIES; SUSTAINED.—** The Control Test, rather than the Grandfather Rule, finds priority application in reckoning the nationalities of corporations engaged in nationalized economic activities. The Grandfather Rule finds no basis in the text of the 1987 Constitution. It is true that the records of the Constitutional Commission "indicate an affirmative reference to the Grandfather Rule." However, whatever references these records make to the Grandfather Rule is not indicative of a consensus among all members of the Constitutional Commission. x x x In contrast, the Control Test is firmly enshrined by congressional dictum in a statute, specifically, Republic Act No. 8179, otherwise known as the Foreign Investments Act (FIA). As this court has pointed out, "[t]he FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment." Section 3 (a) of the Foreign Investments Act defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines." x x x

The Control Test serves the rationale for nationalization of economic activities. It ensures effective control by Filipinos and satisfies the requirement of beneficial ownership. x x x From the definition of "beneficial owner or beneficial ownership" provided by the Implementing Rules and Regulations (amended 2004) of Republic Act No. 8799, otherwise known as the Securities Regulation Code, "there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power." The Implementing Rules use "and/or"; thus, these are alternative means which may or may not concur.

APPEARANCES OF COUNSEL

Gatmaytan Yap Patacsil Gutierrez & Protacio for petitioners.
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R E S O L U T I O N

VELASCO, JR., *J.*:

Before the Court is the Motion for Reconsideration of its April 21, 2014 Decision, which denied the Petition for Review on Certiorari under Rule 45 jointly interposed by petitioners Narra Nickel and Mining Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining Inc. (McArthur), and affirmed the October 1, 2010 Decision and February 15, 2011 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 109703.

Very simply, the challenged Decision sustained the appellate court's ruling that petitioners, being foreign corporations, are not entitled to Mineral Production Sharing Agreements (MPSAs). In reaching its conclusion, this Court upheld with approval the appellate court's finding that there was doubt as to petitioners' nationality since a 100% Canadian-owned firm, MBMI Resources, Inc. (MBMI), effectively owns 60% of the common stocks of

the petitioners by owning equity interest of petitioners' other majority corporate shareholders.

In a strongly worded Motion for Reconsideration dated June 5, 2014, petitioners-movants argued, in the main, that the Court's Decision was not in accord with law and logic. In its September 2, 2014 Comment, on the other hand, respondent Redmont Consolidated Mines Corp. (Redmont) countered that petitioners' motion for reconsideration is nothing but a rehash of their arguments and should, thus, be denied outright for being pro-forma. Petitioners have interposed on September 30, 2014 their Reply to the respondent's Comment.

After considering the parties' positions, as articulated in their respective submissions, We resolve to deny the motion for reconsideration.

I.
The case has not been rendered moot and academic

Petitioners have first off criticized the Court for resolving in its Decision a substantive issue, which, as argued, has supposedly been rendered moot by the fact that petitioners' applications for MPSAs had already been converted to an application for a Financial Technical Assistance Agreement (FTAA), as petitioners have in fact been granted an FTAA. Further, the nationality issue, so petitioners presently claim, had been rendered moribund by the fact that MBMI had already divested itself and sold all its shareholdings in the petitioners, as well as in their corporate stockholders, to a Filipino corporation—DMCI Mining Corporation (DMCI).

As a counterpoint, respondent Redmont avers that the present case has not been rendered moot by the supposed issuance of an FTAA in petitioners' favor as this FTAA was subsequently revoked by the Office of the President (OP) and is currently a subject of a petition pending in the Court's First Division. Redmont likewise contends that the supposed sale of MBMI's interest in the petitioners and in their "holding companies" is a question of fact that is outside the Court's province to verify in a Rule 45 certiorari proceedings. In any case, assuming that the

controversy has been rendered moot, Redmont claims that its resolution on the merits is still justified by the fact that petitioners have violated a constitutional provision, the violation is capable of repetition yet evading review, and the present case involves a matter of public concern.

Indeed, as the Court clarified in its Decision, the conversion of the MPSA application to one for FTAAs and the issuance by the OP of an FTAA in petitioners' favor are irrelevant. The OP itself has already cancelled and revoked the FTAA thus issued to petitioners. Petitioners curiously have omitted this critical fact in their motion for reconsideration. Furthermore, the supposed sale by MBMI of its shares in the petitioner-corporations and in their holding companies is not only a question of fact that this Court is without authority to verify, it also does not negate any violation of the Constitutional provisions previously committed before any such sale.

We can assume for the nonce that the controversy had indeed been rendered moot by these two events. As this Court has time and again declared, the "moot and academic" principle is not a magical formula that automatically dissuades courts in resolving a case.[1] The Court may still take cognizance of an otherwise moot and academic case, if it finds that (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[2] The Court's April 21, 2014 Decision explained in some detail that all four

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[1] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, 460.

[2] *David v. Macapagal-Arroyo*, G.R. No. 171396, *etc*., May 3, 2006, 489 SCRA 160; citing *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736; *Lacson v. Perez*, 410 Phil. 78 (2001); *Albaña v. Comelec*, 478 Phil. 941 (2004); *Chief Supt. Acop v. Guingona, Jr.*, 433 Phil. 62 (2002); *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482 (2004).

(4) of the foregoing circumstances are present in the case. If only to stress a point, we will do so again.

First, allowing the issuance of MPSAs to applicants that are owned and controlled by a 100% foreign-owned corporation, albeit through an intricate web of corporate layering involving alleged Filipino corporations, is tantamount to permitting a blatant violation of Section 2, Article XII of the Constitution. The Court simply cannot allow this breach and inhibit itself from resolving the controversy on the facile pretext that the case had already been rendered academic.

Second, the elaborate corporate layering resorted to by petitioners so as to make it appear that there is compliance with the minimum Filipino ownership in the Constitution is deftly exceptional in character. More importantly, the case is of paramount public interest, as the corporate layering employed by petitioners was evidently designed to circumvent the constitutional caveat allowing only Filipino citizens and corporations 60%-owned by Filipino citizens to explore, develop, and use the country's natural resources.

Third, the facts of the case, involving as they do a web of corporate layering intended to go around the Filipino ownership requirement in the Constitution and pertinent laws, require the establishment of a definite principle that will ensure that the Constitutional provision reserving to Filipino citizens or "corporations at least sixty *per centum* of whose capital is owned by such citizens" be effectively enforced and complied with. The case, therefore, is an opportunity to establish a controlling principle that will "guide the bench, the bar, and the public."

Lastly, the petitioners' actions during the lifetime and existence of the instant case that gave rise to the present controversy are capable of repetition yet evading review because, as shown by petitioners' actions, foreign corporations can easily utilize dummy Filipino corporations through various schemes and stratagems to skirt the constitutional prohibition against foreign mining in Philippine soil.

II.
The application of the Grandfather Rule is justified by the circumstances of the case to determine the nationality of petitioners.

To petitioners, the Court's application of the Grandfather Rule to determine their nationality is erroneous and allegedly without basis in the Constitution, the Foreign Investments Act of 1991 (FIA), the Philippine Mining Act of 1995,[3] and the Rules issued by the Securities and Exchange Commission (SEC). These laws and rules supposedly espouse the application of the Control Test in verifying the Philippine nationality of corporate entities for purposes of determining compliance with Sec. 2, Art. XII of the Constitution that only "corporations or associations at least sixty *per centum* of whose capital is owned by such [Filipino] citizens" may enjoy certain rights and privileges, like the exploration and development of natural resources.

The application of the Grandfather Rule in the present case does not eschew the Control Test.

Clearly, petitioners have misread, and failed to appreciate the clear import of, the Court's April 21, 2014 Decision. Nowhere in that disposition did the Court foreclose the application of the Control Test in determining which corporations may be considered as Philippine nationals. Instead, to borrow Justice Leonen's term, the Court used the Grandfather Rule as a "supplement" to the Control Test so that the intent underlying the averted Sec. 2, Art. XII of the Constitution be given effect. The following excerpts of the April 21, 2014 Decision cannot be clearer:

> In ending, **the "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation**, within the ambit of Sec. 2, Art. XII of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. **When in the mind of the Court, there is doubt, based on the attendant facts and circumstances of the case**, in the 60-40 Filipino equity

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[3] Republic Act No. (RA) 7942, effective April 14, 1995.

ownership in the corporation, **then it may apply the "grandfather rule."** (emphasis supplied)

With that, the use of the Grandfather Rule as a "supplement" to the Control Test is not proscribed by the Constitution or the Philippine Mining Act of 1995.

The Grandfather Rule implements the intent of the Filipinization provisions of the Constitution.

To reiterate, Sec. 2, Art. XII of the Constitution reserves the exploration, development, and utilization of natural resources to Filipino citizens and "corporations or associations at least sixty *per centum* of whose capital is owned by such citizens." Similarly, Section 3(aq) of the Philippine Mining Act of 1995 considers a "corporation x x x registered in accordance with law at least sixty per cent of the capital of which is owned by citizens of the Philippines" as a person qualified to undertake a mining operation. Consistent with this objective, the Grandfather Rule was originally conceived to look into the *citizenship* of the individuals who ultimately own and control the shares of stock of a corporation for purposes of determining compliance with the constitutional requirement of Filipino ownership. It cannot, therefore, be denied that the framers of the Constitution have not foreclosed the Grandfather Rule as a tool in verifying the nationality of corporations for purposes of ascertaining their right to participate in nationalized or partly nationalized activities. The following excerpts from the Record of the 1986 Constitutional Commission suggest as much:

MR. NOLLEDO: In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9, and 2/3-1/3 in Section 15.

MR. VILLEGAS: That is right.

x x x x x x x x x

MR. NOLLEDO: Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in

another corporation which is permitted by the Corporation Code, **does the Committee adopt the grandfather rule**?

MR. VILLEGAS: **Yes, that is the understanding of the Committee**.

As further defined by Dean Cesar Villanueva, the Grandfather Rule is "**the method by which the percentage of Filipino equity in a corporation** engaged in nationalized and/or partly nationalized areas of activities, provided for under the Constitution and other nationalization laws, **is computed, in cases where corporate shareholders are present, by *attributing* the nationality of the second or even subsequent tier of ownership to determine the nationality of the corporate shareholder**."[4] Thus, to arrive at the actual Filipino ownership and control in a corporation, both the direct and indirect shareholdings in the corporation are determined.

This concept of stock attribution inherent in the Grandfather Rule to determine the ultimate ownership in a corporation is observed by the Bureau of Internal Revenue (BIR) in applying Section 127 (B)[5] of the National Internal Revenue Code on

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[4] Villanueva, Cesar Lapuz, *Philippine Corporate Law* (2001), p. 54. Emphasis and italicization supplied.

[5] SEC. 127. **Tax on Sale, Barter or Exchange of Shares of Stock Listed Traded through the Local Stock Exchange or through Initial Public Offering. —**

(B) Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the propositon of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

x x x x x x x x x

For purposes of this Section, the term 'closely held corporation' means any corporation at least fifty percent (50%) in value of the outstanding capital stock of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.

taxes imposed on closely held corporations, in relation to Section 96 of the Corporation Code[6] on close corporations. Thus, in BIR Ruling No. 148-10, Commissioner Kim Henares held:

> **In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders. This is in consonance with the "grandfather rule" adopted in the Philippines under Section 96 of the Corporation Code** (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the issued stock of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation.[7]

For purposes of determining whether the corporation is a closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

(1) Stock not Owned by Individuals. — **Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries**. x x x

[6] Sec. 96. Definition and applicability of Title. –

A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. **Notwithstanding the foregoing, a corporation shall not be deemed a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.**

Any corporation may be incorporated as a close corporation, except mining or oil companies, stock exchanges, banks, insurance companies, public utilities, educational institutions and corporations declared to be vested with public interest in accordance with the provisions of this Code.

[7] Dated December 17, 2010; emphasis supplied. See also BIR Ruling Nos. 072-97, July 2, 1997 and 055-81, March 23, 1981.

In SEC-OGC Opinion No. 10-31 dated December 9, 2010 (SEC Opinion 10-31), the SEC applied the Grandfather Rule even if the corporation engaged in mining operation *passes the 60-40 requirement of the Control Test*, viz:

You allege that the structure of MML's ownership in PHILSAGA is as follows: (1) MML owns 40% equity in MEDC, while the 60% is ostensibly owned by Philippine individual citizens who are actually MML's controlled nominees; (2) MEDC, in turn, owns 60% equity in MOHC, while MML owns the remaining 40%; (3) Lastly, MOHC owns 60% of PHILSAGA, while MML owns the remaining 40%. You provide the following figure to illustrate this structure:

x x x x x x x x x

We note that the Constitution and the statute use the concept "Philippine citizens." Article III, Section 1 of the Constitution provides who are Philippine citizens: x x x This enumeration is exhaustive. In other words, there can be no other Philippine citizens other than those falling within the enumeration provided by the Constitution. Obviously, only natural persons are susceptible of citizenship. Thus, for purposes of the Constitutional and statutory restrictions on foreign participation in the exploitation of mineral resources, a corporation investing in a mining joint venture can never be considered as a Philippine citizen.

The Supreme Court En Banc confirms this [in]… Pedro R. Palting, vs. San Jose Petroleum [Inc.]. The Court held that a corporation investing in another corporation engaged in a nationalized activity cannot be considered as a citizen for purposes of the Constitutional provision restricting foreign exploitation of natural resources:

x x x x x x x x x

Accordingly, we opine that we must look into the citizenship of the individual stockholders, i.e. natural persons, of that investor-corporation in order to determine if the Constitutional and statutory restrictions are complied with. If the shares of stock of the immediate investor corporation is in turn held and controlled by another corporation, then we must look into the citizenship of the individual stockholders of the latter corporation. **In other words, if there are layers of intervening corporations investing in a mining joint venture, we must delve into the citizenship of the individual stockholders of each corporation.** This is the strict application

of the grandfather rule, which the Commission has been consistently applying prior to the 1990s.

Indeed, the framers of the Constitution intended for the "grandfather rule" to apply in case a 60%-40% Filipino-Foreign equity corporation invests in another corporation engaging in an activity where the Constitution restricts foreign participation.

x x x x x x x x x

Accordingly, under the structure you represented, the joint mining venture is 87.04 % foreign owned, while it is only 12.96% owned by Philippine citizens. Thus, the constitutional requirement of 60% ownership by Philippine citizens is violated. (emphasis supplied)

Similarly, in the eponymous *Redmont Consolidated Mines Corporation v. McArthur Mining Inc., et al.*,[8] the SEC *en banc* applied the Grandfather Rule despite the fact that the subject corporations ostensibly have satisfied the 60-40 Filipino equity requirement. The SEC *en banc* held that **to attain the Constitutional objective of reserving to Filipinos the utilization of natural resources, *one should not stop where the percentage of the capital stock is 60%.*** Thus:

[D]oubt, we believe, exists in the instant case because the foreign investor, MBMI, provided practically all the funds of the remaining appellee-corporations. The records disclose that: (1) Olympic Mines and Development Corporation ("OMDC"), a domestic corporation, and MBMI subscribed to 6,663 and 3,331 shares, respectively, out of the authorized capital stock of Madridejos; however, OMDC paid nothing for this subscription while MBMI paid ₱2,803,900.00 out of its total subscription cost of ₱3,331,000.00; (2) Palawan Alpha South Resource Development Corp. ("Palawan Alpha"), also a domestic corporation, and MBMI subscribed to 6,596 and 3,996 shares, respectively, out of the authorized capital stock of Patricia Louise; however, Palawan Alpha paid nothing for this subscription while MBMI paid ₱2,796,000.00 out of its total subscription cost of ₱3,996,000.00; (3) OMDC and MBMI subscribed to 6,663 and 3,331 shares, respectively, out of the authorized capital stock of Sara Marie; however, OMDC paid nothing for this

[8] SEC *En Banc* Case No. 09-09-177, March 25, 2010.

subscription while MBMI paid ₱2,794,000.00 out of its total subscription cost of ₱3,331,000.00; and (4) Falcon Ridge Resources Management Corp. ("Falcon Ridge"), another domestic corporation, and MBMI subscribed to 5,997 and 3,998 shares, respectively, out of the authorized capital stock of San Juanico; however, Falcon Ridge paid nothing for this subscription while MBMI paid ₱2,500,000.00 out of its total subscription cost of ₱3,998,000.00. Thus, pursuant to the afore-quoted DOJ Opinion, the Grandfather Rule must be used.

x x x x x x x x x

The avowed purpose of the Constitution is to place in the hands of Filipinos the exploitation of our natural resources. Necessarily, therefore, the Rule interpreting the constitutional provision should not diminish that right through the legal fiction of corporate ownership and control. But the constitutional provision, as interpreted and practiced via the 1967 SEC Rules, has favored foreigners contrary to the command of the Constitution. Hence, **the Grandfather Rule must be applied to accurately determine the actual participation, both direct and indirect, of foreigners in a corporation engaged in a nationalized activity or business.**

The method employed in the Grandfather Rule of attributing the shareholdings of a given corporate shareholder to the second or even the subsequent tier of ownership hews with the rule that the "***beneficial ownership***" of corporations engaged in nationalized activities must reside in the hands of Filipino citizens. Thus, *even if the 60-40 Filipino equity requirement appears to have been satisfied*, the Department of Justice (DOJ), in its Opinion No. 144, S. of 1977, stated that **an agreement that may distort the actual economic or beneficial ownership of a mining corporation may be struck down as violative of the constitutional requirement**, viz:

In this connection, you raise the following specific questions:

1. Can a Philippine corporation with 30% equity owned by foreigners enter into a mining service contract with a foreign company granting the latter a share of not more than 40% from the proceeds of the operations?

x x x x x x x x x

By law, **a mining lease may be granted only to a Filipino citizen, or to a corporation or partnership registered with the [SEC] at least 60% of the capital of which is owned by Filipino citizens** and possessing x x x. **The sixty percent Philippine equity requirement in mineral resource exploitation** x x x **is intended to insure, among other purposes, the conservation of indigenous natural resources, for Filipino posterity** x x x. I think it is implicit in this provision, even if it refers merely to ownership of stock in the corporation holding the mining concession, that **<u>beneficial ownership of the right to dispose, exploit, utilize, and develop natural resources shall pertain to Filipino citizens, and that the nationality requirement is not satisfied unless Filipinos are the principal beneficiaries in the exploitation of the country's natural resources</u>**. This criterion of beneficial ownership is tacitly adopted in Section 44 of P.D. No. 463, above-quoted, which limits the service fee in service contracts to 40% of the proceeds of the operation, thereby implying that the 60-40 benefit-sharing ration is derived from the 60-40 equity requirement in the Constitution.

x x x x x x x x x

It is obvious that while payments to a service contractor may be justified as a service fee, and therefore, properly deductible from gross proceeds, **the service contract could be employed as a means of going about or circumventing the constitutional limit on foreign equity participation and the obvious constitutional policy to insure that Filipinos retain beneficial ownership of our mineral resources**. Thus, every service contract scheme has to be evaluated in its entirety, on a case to case basis, to determine reasonableness of the total "service fee" x x x like the options available to the contractor to become equity participant in the Philippine entity holding the concession, or to acquire rights in the processing and marketing stages. x x x (emphasis supplied)

The "beneficial ownership" requirement was subsequently used *in tandem* with the "situs of control" to determine the nationality of a corporation in DOJ Opinion No. 84, S. of 1988, <u>through the Grandfather Rule</u>, *despite the fact that both the investee and investor corporations purportedly satisfy the 60-40 Filipino equity requirement*:[9]

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[9] Dated April 26, 1988.

This refers to your request for opinion on whether or not there may be an investment in real estate by a domestic corporation (the investing corporation) seventy percent (70%) of the capital stock of which is owned by another domestic corporation with at least 60%-40% Filipino-Foreign Equity, while the remaining thirty percent (30%) of the capital stock is owned by a foreign corporation.

x x x x x x x x x

This Department has had the occasion to rule in several opinions that it is implicit in the constitutional provisions, even if it refers merely to ownership of stock in the corporation holding the land or natural resource concession, **that the nationality requirement is not satisfied unless it meets the criterion of beneficial ownership, i.e. Filipinos are the principal beneficiaries in the exploration of natural resources** (Op. No. 144, s. 1977; Op. No. 130, s. 1985)**, and that in applying the same "the primordial consideration is situs of control, whether in a stock or non-stock corporation"** (Op. No. 178, s. 1974). As stated in the *Register of Deeds vs. Ung Sui Si Temple* (97 Phil. 58), obviously to insure that corporations and associations allowed to acquire agricultural land or to exploit natural resources "shall be controlled by Filipinos." Accordingly, **any arrangement which attempts to defeat the constitutional purpose should be eschewed** (Op. No 130, s. 1985).

We are informed that in the registration of corporations with the [SEC], compliance with the sixty per centum requirement is being monitored by SEC under the "Grandfather Rule" a method by which the percentage of Filipino equity in corporations engaged in nationalized and/or partly nationalized areas of activities provided for under the Constitution and other national laws is accurately computed, and the diminution if said equity prevented (SEC Memo, S. 1976). **The "Grandfather Rule" is applied specifically in cases where the corporation has corporate stockholders with alien stockholdings, otherwise, if the rule is not applied, the presence of such corporate stockholders could diminish the effective control of Filipinos**.

Applying the "Grandfather Rule" in the instant case, the result is as follows: x x x the total foreign equity in the investing corporation is 58% while the Filipino equity is only 42%, in the investing corporation, subject of your query, is disqualified from investing in real estate, which is a nationalized activity, as it does not meet

the 60%-40% Filipino-Foreign equity requirement under the Constitution.

This pairing of the concepts "beneficial ownership" and the "situs of control" in determining what constitutes "capital" has been adopted by this Court in *Heirs of Gamboa v. Teves.*[10] In its October 9, 2012 Resolution, the Court clarified, thus:

> This is consistent with Section 3 of the FIA which provides that where 100% of the capital stock is held by "a trustee of funds for pension or other employee retirement or separation benefits," the trustee is a Philippine national if "at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals." Likewise, Section 1(b) of the Implementing Rules of the FIA provides that "for stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. **Full beneficial ownership of the stocks, coupled with appropriate voting rights, is essential**." (emphasis supplied)

In emphasizing the twin requirements of "beneficial ownership" and "control" in determining compliance with the required Filipino equity in *Gamboa*, the *en banc* Court explicitly cited with approval the SEC e*n banc*'s application in *Redmont Consolidated Mines, Corp. v. McArthur Mining, Inc., et al.* of the Grandfather Rule, to wit:

> Significantly, **the SEC en banc**, which is the collegial body statutorily empowered to issue rules and opinions on behalf of SEC, **has adopted the Grandfather Rule** in determining compliance with the 60-40 ownership requirement in favor of Filipino citizens mandated by the Constitution for certain economic activities. **This prevailing SEC ruling, which the SEC correctly adopted to thwart any circumvention of the required Filipino "ownership and control,"** is laid down in the 25 March 2010 SEC en banc ruling in Redmont Consolidated Mines, Corp. v. McArthur Mining, Inc., et al. x x x (emphasis supplied)

Applying *Gamboa*, the Court, in *Express Investments III Private Ltd. v. Bayantel Communications, Inc.*,[11] denied the foreign

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[10] G.R. No. 176579, October 9, 2012.

[11] G.R. Nos. 175418-20, December 5, 2012.

creditors' proposal to convert part of Bayantel's debts to common shares of the company at a rate of 77.7%. **Supposedly*, the conversion of the debts to common shares by the foreign creditors would be done, both directly and indirectly, in order to meet the control test principle under the FIA*.** Under the proposed structure, the foreign creditors would own 40% of the outstanding capital stock of the telecommunications company on a direct basis, while the remaining 40% of shares would be registered to a holding company that shall retain, on a direct basis, the other 60% equity reserved for Filipino citizens. **Nonetheless, the Court found the proposal non-compliant with the Constitutional requirement of Filipino ownership** as the proposed structure would give more than 60% of the ownership of the common shares of Bayantel to the foreign corporations, viz:

> In its Rehabilitation Plan, among the material financial commitments made by respondent Bayantel is that its shareholders shall relinquish the agreed-upon amount of common stock[s] as payment to Unsecured Creditors as per the Term Sheet. **Evidently, the parties intend to convert the unsustainable portion of respondent's debt into common stocks, which have voting rights. If we indulge petitioners on their proposal, the Omnibus Creditors which are foreign corporations, shall have control over 77.7% of Bayantel, a public utility company. This is precisely the scenario proscribed by the Filipinization provision of the Constitution.** Therefore, the Court of Appeals acted correctly in sustaining the 40% debt-to-equity ceiling on conversion. (emphasis supplied)

As shown by the quoted legislative enactments, administrative rulings, opinions, and this Court's decisions, the Grandfather Rule not only finds basis, but more importantly, it implements the Filipino equity requirement, in the Constitution.

Application of the Grandfather Rule with the Control Test.

Admittedly, an ongoing quandary obtains as to the role of the Grandfather Rule in determining compliance with the minimum Filipino equity requirement vis-à-vis the Control Test. This

confusion springs from the erroneous assumption that the use of one method forecloses the use of the other.

As exemplified by the above rulings, opinions, decisions and this Court's April 21, 2014 Decision, the Control Test can be, as it has been, applied *jointly with* the Grandfather Rule to determine the observance of foreign ownership restriction in nationalized economic activities. **The Control Test and the Grandfather Rule** are not, as it were, incompatible ownership-determinant methods that can only be applied alternative to each other. Rather, these methods **can, if appropriate, be used cumulatively in the determination of the ownership and control of corporations engaged in fully or partly nationalized activities**, as the mining operation involved in this case or the operation of public utilities as in *Gamboa* or *Bayantel*.

The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it is only when the Control Test is first complied with that the Grandfather Rule may be applied.** Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.

On the other hand, **a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation *if there is no doubt* as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule.**[12] As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is**

[12] *See* SEC-OGC Opinion No. 03-08 dated 15 January 2008.

necessary *if doubt exists* as to the *locus* of the "beneficial ownership" and "control." In this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary.

As explained in the April 21, 2012 Decision, the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, **"doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders**. As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the Constitution, "significant indicators of the dummy status" have been recognized in view of reports "that some Filipino investors or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors" specifically in joint ventures for national resource exploitation. These indicators are:

1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner;

2. That the foreign investors undertake to provide practically all the technological support for the joint venture;

3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.

Thus, *In the Matter of the Petition for Revocation of the Certificate of Registration of Linear Works Realty Development Corporation*,[13] the SEC held that **when foreigners contribute more capital to an enterprise, doubt exists as to the actual**

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[13] SEC *En Banc* Case No. 07-10-205, November 25, 2010.

control and ownership of the subject corporation even if the 60% Filipino equity threshold is met. Hence, the SEC in that one ordered a further investigation, viz:

> x x x The [SEC Enforcement and Prosecution Department (EPD)] maintained that the basis for determining the level of foreign participation is the number of shares subscribed, regardless of the par value. Applying such an interpretation, the EPD rules that the foreign equity participation in Linearworks Realty Development Corporation amounts to 26.41% of the corporation's capital stock since the amount of shares subscribed by foreign nationals is 1,795 only out of the 6,795 shares. Thus, **the subject corporation is compliant with the 40% limit on foreign equity participation**. Accordingly, the EPD dismissed the complaint, and did not pursue any investigation against the subject corporation.
>
> x x x x x x x x x
>
> x x x [I]n this respect we find no error in the assailed order made by the EPD. The EPD did not err when it did not take into account the par value of shares in determining compliance with the constitutional and statutory restrictions on foreign equity.
>
> However, **we are aware that some unscrupulous individuals employ schemes to circumvent the constitutional and statutory restrictions on foreign equity**. **In the present case, <u>the fact that the shares of the Japanese nationals have a greater par value but only have similar rights to those held by Philippine citizens having much lower par value, is highly suspicious</u>.** This is because **a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him.** Thus**, <u>it is reasonable to suspect</u>** that there may be secret arrangements between the corporation and the stockholders wherein **<u>the Japanese nationals who subscribed to the shares with greater par value actually have greater control and economic rights</u>** contrary to the equality of shares based on the articles of incorporation.
>
> With this in mind, we find it proper for the EPD to investigate the subject corporation. The EPD is advised to avail of the Commission's subpoena powers in order to gather sufficient evidence, and file the necessary complaint.

As will be discussed, even if at first glance the petitioners comply with the 60-40 Filipino to foreign equity ratio, **doubt**

exists in the present case that gives rise to a reasonable suspicion that the Filipino shareholders do not actually have the requisite number of control and beneficial ownership in petitioners Narra, Tesoro, and McArthur. Hence, a further investigation and dissection of the extent of the ownership of the corporate shareholders through the Grandfather Rule is justified.

Parenthetically, it is advanced that the application of the Grandfather Rule is impractical as tracing the shareholdings to the point when natural persons hold rights to the stocks may very well lead to an investigation *ad infinitum*. Suffice it to say in this regard that, while the Grandfather Rule was originally intended to trace the shareholdings to the point where natural persons hold the shares, the SEC had already set up a limit as to the number of corporate layers the attribution of the nationality of the corporate shareholders may be applied.

In a 1977 internal memorandum, the SEC suggested applying the Grandfather Rule on two (2) levels of corporate relations for publicly-held corporations or where the shares are traded in the stock exchanges, and to three (3) levels for closely held corporations or the shares of which are not traded in the stock exchanges.[14] These limits comply with the requirement in *Palting v. San Jose Petroleum, Inc.*[15] that the application of the Grandfather Rule cannot go beyond the level of what is reasonable.

A doubt exists as to the extent of control and beneficial ownership of MBMI over the petitioners and their investing corporate stockholders.

In the Decision subject of this recourse, the Court applied the Grandfather Rule to determine the matter of true ownership and control over the petitioners as doubt exists as to the actual extent of the participation of MBMI in the equity of the petitioners and their investing corporations.

We considered the following membership and control structures and like nuances:

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[14] Villanueva, Cesar Lapuz. *Philippine Corporate Law* (2001), p. 54.

[15] No. L-14441, December 17, 1966, 18 SCRA 924.

Tesoro

Supposedly Filipino corporation Sara Marie Mining, Inc. (Sara Marie) holds 59.97% of the 10,000 *common* shares of petitioner Tesoro while the Canadian-owned company, MBMI, holds 39.98% of its shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Sara Marie Mining, Inc.	Filipino	5,997	₱5,997,000.00	₱825,000.00
MBMI Resources, Inc.[16]	Canadian	3,998	₱3,998,000.00	₱1,878,174.60
Lauro L. Salazar	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,708,174.60

In turn, the Filipino corporation Olympic Mines & Development Corp. (Olympic) holds 66.63% of Sara Marie's shares while the same Canadian company MBMI holds 33.31% of Sara Marie's shares. Nonetheless, it is admitted that Olympic did not pay a single peso for its shares. On the contrary, MBMI paid for 99% of the paid-up capital of Sara Marie.

Name	Nationality	Number of	Amount	Amount Paid
Olympic Mines & Development Corp.[17]	Filipino	6,663	₱6,663,000.00	**₱0.00**
MBMI Resources, Inc.	Canadian	3,331	₱3,331,000.00	₱2,794,000.00
Amanti Limson	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00

[16] Emphasis supplied.

[17] Emphasis supplied.

Lauro Salazar	Filipino	1	₱1,000.00	₱1,000.00
Emmanuel G. Hernando	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,800,000.00

The fact that MBMI had practically provided all the funds in Sara Marie and Tesoro creates serious doubt as to the true extent of its (MBMI) control and ownership over both Sara Marie and Tesoro since, as observed by the SEC, "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." The application of the Grandfather Rule is clearly called for, and as shown below, the Filipinos' control and economic benefits in petitioner Tesoro (through Sara Marie) fall below the threshold 60%, viz:

Filipino participation in petitioner Tesoro: 40.01%

$\frac{66.67}{100}$ (Filipino equity in Sara Marie) x 59.97 (Sara Marie's share in Tesoro) = **39.98%**

39.98% + .03% (shares of individual Filipino shareholders [SHs] in Tesoro) = **40.01%**

Foreign participation in petitioner Tesoro: 59.99%

$\frac{33.33}{100}$ (Foreign equity in Sara Marie) x 59.97 (Sara Marie's share in Tesoro) = **19.99%**

19.99% + 39.98% (MBMI's direct participation in Tesoro) + .02% (shares of foreign individual SHs in Tesoro)
= **59.99%**

With only 40.01% Filipino ownership in petitioner Tesoro, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner Tesoro does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Hence, the appellate court's observation that Tesoro is a foreign corporation not entitled to an MPSA is apt.

McArthur

Petitioner McArthur follows the corporate layering structure of Tesoro, as 59.97% of its 10, 000 common shares is owned by supposedly Filipino Madridejos Mining Corporation (Madridejos), while 39.98% belonged to the Canadian MBMI.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Madridejos Mining Corporation	Filipino	5,997	₱5,997,000.00	₱825,000.00
MBMI Resources, Inc.[18]	Canadian	3,998	₱3,998,000.00	₱1,878,174.60
Lauro L. Salazar	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkell	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,708,174.60

In turn, 66.63% of Madridejos' shares were held by Olympic while 33.31% of its shares belonged to MBMI. Yet again, Olympic did not contribute to the paid-up capital of Madridejos and it was MBMI that provided 99.79% of the paid-up capital of Madridejos.

Name	Nationality	Number of	Amount	Amount Paid
Olympic Mines & Development Corp.[19]	Filipino	6,663	₱6,663,000.00	**₱0.00**
MBMI Resources, Inc.	Canadian	3,331	₱3,331,000.00	₱2,803,900.00
Amanti Limson	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Lauro Salazar	Filipino	1	₱1,000.00	₱1,000.00
Emmanuel G. Hernando	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,809,900.00

[18] Emphasis supplied.

[19] Emphasis supplied.

Again, the fact that MBMI had practically provided all the funds in Madridejos and McArthur creates serious doubt as to the true extent of its control and ownership of MBMI over both Madridejos and McArthur. The application of the Grandfather Rule is clearly called for, and as will be shown below, MBMI, along with the other foreign shareholders, breached the maximum limit of 40% ownership in petitioner McArthur, rendering the petitioner disqualified to an MPSA:

Filipino participation in petitioner McArthur: 40.01%

$\frac{66.67}{100}$ (Filipino equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = **39.98%**

39.98% + .03% (shares of individual Filipino SHs in McArthur) = **40.01%**

Foreign participation in petitioner McArthur: 59.99%

$\frac{33.33}{100}$ (Foreign equity in Madridejos) x 59.97 (Madridejos' share in McArthur) = **19.99%**

19.99% + 39.98% (MBMI's direct participation in McArthur) + .02% (shares of foreign individual SHs in McArthur) = **59.99%**

As with petitioner Tesoro, with only 40.01% Filipino ownership in petitioner McArthur, as compared to 59.99% foreign ownership of its shares, it is clear that petitioner McArthur does not comply with the minimum Filipino equity requirement imposed in Sec. 2, Art. XII of the Constitution. Thus, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

Narra

As for petitioner Narra, 59.97% of its shares belonged to Patricia Louise Mining & Development Corporation (PLMDC), while Canadian MBMI held 39.98% of its shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Patricia Lousie Mining and Development Corp.	Filipino	5,997	₱5,997,000.00	₱1,677,000.00
MBMI Resources, Inc.[20]	Canadian	3,996	₱3,996,000.00	₱1,116,000.00
Higinio C. Mendoza, Jr.	Filipino	1	₱1,000.00	₱1,000.00
Henry E. Fernandez	Filipino	1	₱1,000.00	₱1,000.00
Ma. Elena A. Bocalan	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Robert L. McCurdy	Canadian	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Bayani H. Agabin	Filipino	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,800,000.00

PLMDC's shares, in turn, were held by Palawan Alpha South Resources Development Corporation (PASRDC), which subscribed to 65.96% of PLMDC's shares, and the Canadian MBMI, which subscribed to 33.96% of PLMDC's shares.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Palawan Alpha South Resource Development Corp.	Filipino	6,596	₱6,596,000.00	**₱0**
MBMI Resources, Inc.[21]	Canadian	3,396	₱3,396,000.00	₱2,796,000.00
Higinio C. Mendoza, Jr.	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Henry E. Fernandez	Filipino	1	₱1,000.00	₱1,000.00
Ma. Elena A. Bocalan	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Robert L. McCurdy	Canadian	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Bayani H, Agabin	Filipino	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,804,000.00

[20] Emphasis supplied.

[21] Emphasis supplied.

Yet again, PASRDC did not pay for any of its subscribed shares, while MBMI contributed 99.75% of PLMDC's paid-up capital. This fact **creates serious doubt as to the true extent of MBMI's control and ownership over both PLMDC and Narra** since "a reasonable investor would expect to have greater control and economic rights than other investors who invested less capital than him." Thus, the application of the Grandfather Rule is justified. And as will be shown, it is clear that the Filipino ownership in petitioner Narra falls below the limit prescribed in both the Constitution and the Philippine Mining Act of 1995.

Filipino participation in petitioner Narra: 39.64%

$\frac{66.02}{100}$ (Filipino equity in PLMDC) x 59.97 (PLMDC's share in Narra) = **39.59%**

39.59% + .05% (shares of individual Filipino SHs in McArthur) = **39.64%**

Foreign participation in petitioner Narra: 60.36%

$\frac{33.98}{100}$ (Foreign equity in PLMDC) x 59.97 (PLMDC's share in Narra) = 20.38**%**

20.38% + 39.96% (MBMI's direct participation in Narra) + .02% (shares of foreign individual SHs in McArthur)
= **60.36%**

With 60.36% *foreign ownership* in petitioner Narra, as compared to only 39.64% Filipino ownership of its shares, it is clear that petitioner Narra does not comply with the minimum Filipino equity requirement imposed in Section 2, Article XII of the Constitution. Hence, the appellate court did not err in holding that petitioner McArthur is a foreign corporation not entitled to an MPSA.

It must be noted that the foregoing determination and computation of petitioners' Filipino equity composition was based on their ***common shareholdings***, not preferred or redeemable shares. Section 6 of the Corporation Code of the Philippines explicitly provides that "no share may be deprived of voting rights except those classified as 'preferred' or 'redeemable' shares." Further, as Justice Leonen puts it, there is "no indication

that any of the shares x x x do not have voting rights, [thus] it must be assumed that all such shares have voting rights."[22] It cannot therefore be gainsaid that the foregoing computation hewed with the pronouncements of *Gamboa*, as implemented by SEC Memorandum Circular No. 8, Series of 2013, (SEC Memo No. 8)[23] Section 2 of which states:

> Section 2. All covered corporations shall, at all times, observe the constitutional or statutory requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

In fact, there is no indication that herein petitioners issued any other class of shares besides the 10,000 common shares. Neither is it suggested that the common shares were further divided into voting or non-voting common shares. Hence, for purposes of this case, items a) and b) in SEC Memo No. 8 both refer to the 10,000 common shares of each of the petitioners, and there is no need to separately apply the 60-40 ratio to any segment or part of the said common shares.

III.
In mining disputes, the POA has jurisdiction to pass upon the nationality of applications for MPSAs

Petitioners also scoffed at this Court's decision to uphold the jurisdiction of the Panel of Arbitrators (POA) of the Department of Environment and Natural Resources (DENR) since the POA's determination of petitioners' nationalities is supposedly beyond its limited jurisdiction, as defined in *Gonzales v. Climax Mining Ltd.*[24] and *Philex Mining Corp. v. Zaldivia*.[25]

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[22] Dissenting Opinion, p. 41.

[23] Otherwise known as the "Guidelines on Compliance with the Filipino-Foreign Ownership Requirements Prescribed in the Constitution and/or Existing Laws by Corporations Engaged in Nationalized and Partly Nationalized Activities," dated May 20, 2013 and Published on May 22, 2013.

[24] 492 Phil. 682 (2005).

[25] 150 Phil. 547 (1972).

The April 21, 2014 Decision did not dilute, much less overturn, this Court's pronouncements in either *Gonzales* or *Philex Mining* that POA's jurisdiction "is limited only to mining disputes which raise questions of fact," and not judicial questions cognizable by regular courts of justice. However, to properly recognize and give effect to the jurisdiction vested in the POA by Section 77 of the Philippine Mining Act of 1995,[26] and in parallel with this Court's ruling in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*,[27] the Court has recognized in its Decision that in resolving disputes "involving rights to mining areas" and "involving mineral agreements or permits," the POA has jurisdiction to make a *preliminary* finding of the required nationality of the corporate applicant in order to determine its right to a mining area or a mineral agreement.

There is certainly nothing novel or aberrant in this approach. In ejectment and unlawful detainer cases, where the subject of inquiry is possession *de facto*, the jurisdiction of the municipal trial courts to make a *preliminary* adjudication regarding ownership of the real property involved is allowed, but only for purposes of ruling on the determinative issue of material possession.

The present case arose from petitioners' MPSA applications, in which they asserted their respective rights to the mining areas each applied for. Since respondent Redmont, itself an applicant for exploration permits over the same mining areas, filed petitions for the denial of petitioners' applications, it should be clear that

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[26] Section 77 of RA 7942:

Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:

(a) Disputes involving rights to mining areas;

(b) Disputes involving mineral agreements or permits.

[27] 565 Phil. 466 (2007). The Court held: "The phrase 'disputes involving rights to mining areas' refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of the DENR A 96-40 x x x."

there exists a controversy between the parties and it is POA's jurisdiction to resolve the said dispute. POA's ruling on Redmont's assertion that petitioners are foreign corporations not entitled to MPSA is but a necessary incident of its disposition of the mining dispute presented before it, which is whether the petitioners are entitled to MPSAs.

Indeed, as the POA has jurisdiction to entertain "disputes involving rights to mining areas," it necessarily follows that the POA likewise wields the authority to pass upon the nationality issue involving petitioners, since the resolution of this issue is essential and indispensable in the resolution of the main issue, i.e., the determination of the petitioners' right to the mining areas through MPSAs.

WHEREFORE, We **DENY** the motion for reconsideration **WITH FINALITY**. No further pleadings shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

Peralta, Mendoza, and *Jardeleza, JJ.,* concur.

Leonen, J., dissents. see separate opinion.

DISSENTING OPINION

LEONEN, *J.*:

I dissent from the majority's Resolution denying with finality the Motion for Reconsideration filed by petitioners. I maintain the positions I articulated in my Dissent to the April 21, 2014 Decision.

I welcome the majority's statements clarifying the relative applicability of the Grandfather Rule in relation to the Control Test. I particularly welcome the clarification that "it is only when the Control Test is *first* complied with that the Grandfather Rule may be applied."[1] This is in line with the position I articulated

[1] *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, 12 [Per *J.* Velasco, Jr., Special Third Division Resolution].

in my Dissent to the April 21, 2014 Decision that the Control Test should find priority in application, with the Grandfather Rule being applicable only as a "supplement."[2]

However, I maintain that the Panel of Arbitrators of the Department of Environment and Natural Resources (DENR Panel of Arbitrators) never had jurisdiction to rule on the nationalities of petitioners Narra Nickel Mining and Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining, Inc. (McArthur) and on the question of whether they should be qualified to hold Mineral Production Sharing Agreements (MPSA). It is error for the majority to rule that petitioners are foreign corporations proceeding from the actions of a body which never had jurisdiction and competence to rule on the *judicial* question of nationality.

Likewise, I maintain that respondent Redmont Consolidated Mines Corp. (Redmont) engaged in blatant forum shopping. This, the lack of jurisdiction and competence of the DENR Panel of Arbitrators, and the error of proceeding from the acts of an incompetent body are sufficient grounds for granting the Petition and should suffice as bases for granting the present Motion for Reconsideration.

I

The DENR Panel of Arbitrators had no competence to rule on the Petitions filed by Redmont

The jurisdiction of the DENR Panel of Arbitrators is spelled out in Section 77 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Mining Act"):

> Section 77. Panel of Arbitrators – . . . . Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

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[2] *J.* Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf>, [Per *J.* Velasco, Jr., Third Division].

(a) Disputes involving rights to mining areas;
(b) Disputes involving mineral agreements or permit;
(c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
(d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

The April 21, 2014 Decision sustained the jurisdiction of the DENR Panel of Arbitrators, relying on pronouncements made in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*[3] which construed the phrase "disputes involving rights to mining areas" as referring "to any adverse claim, protest, or opposition to an application for mineral agreement."[4]

However, the Decision interpreted Section 77 of the Mining Act in a manner that runs afoul of this court's pronouncements in its Decision penned by Associate Justice Dante Tinga in *Gonzales v. Climax Mining Ltd.*[5] and in its Decision penned by Associate Justice J.B.L. Reyes in *Philex Mining Corp. v. Zaldivia*.[6]

As pointed out in my Dissent to the April 21, 2014 Decision, "*Gonzales v. Climax Mining Ltd.*,[7] ruled on the jurisdiction of the Panel of Arbitrators as follows:"

We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the Panel of Arbitrators have jurisdiction over the complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and **violation of the Constitution**? This issue may be distilled into the more basic question of whether the *Complaint* raises a mining dispute or a judicial question.

A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or

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[3] 565 Phil. 466 (2007) [Per *J.* Velasco, Jr., Second Division].

[4] *Id.* at 499.

[5] 492 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

[6] 150 Phil. 547 (1972) [Per *J.* J.B.L. Reyes, *En Banc*].

[7] 492 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

one properly decided by the executive or legislative branch. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.

On the other hand, a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that ***the Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.***[8] (Emphasis supplied, citation omitted)

Philex Mining Corp. v. Zaldivia[9] settled what "questions of fact" are appropriate for resolution in a mining dispute:

We see nothing in [S]ections 61 and 73 of the Mining Law that indicates a legislative intent to confer real judicial power upon the Director of Mines. The very terms of [S]ection 73 of the Mining Law, as amended by Republic Act No. 4388, in requiring that the adverse claim must "state *in full detail the nature, boundaries* and *extent* of the adverse claim" show that the conflicts to be decided by reason of such adverse claim refer primarily to questions of fact. This is made even clearer by the explanatory note to House Bill No. 2522, later to become Republic Act 4388, that "[S]ections 61 and 73 that refer to the overlapping of claims are amended to expedite resolutions of mining conflicts * * *." **The controversies to be submitted and resolved by the Director of Mines under the sections refer ther[e]fore only to the overlapping of claims and administrative matters incidental thereto**.[10] (Emphasis supplied)

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[8] *Id*. at 692-693, as cited in *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 10–11 [Per *J*. Velasco, Jr., Third Division].

[9] 150 Phil. 547 (1972) [Per *J*. Reyes, J.B.L, En Banc].

[10] *Id*. at 553-554, as cited in *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/

The DENR Panel of Arbitrators, as its name denotes, is an arbitral body. It is not a court of law. Its competence rests in its capacity to resolve factual issues arising between parties with competing mining claims and requiring the application of technical expertise.

In this case, Redmont has not even shown that it has a competing mining claim. It has asked only that petitioners be declared as not qualified to enter into MPSAs.

By sustaining the jurisdiction of the DENR Panel of Arbitrators, the majority effectively diminishes (if not totally abandons) the distinction made in *Gonzales* and *Philex* between "mining disputes" and "judicial questions." Per *Gonzales* and *Philex,* judicial questions are cognizable only by courts of justice, not by the DENR Panel of Arbitrators.

The majority's reference to *Celestial* takes out of context the pronouncements made therein. To reiterate what I have stated in my Dissent to the April 21, 2014 Decision, "[t]he pronouncements in *Celestial* cited by the ponencia were made to address the assertions of Celestial Nickel and Mining Corporation (Celestial Nickel) and Blue Ridge Mineral Corporation (Blue Ridge) that the Panel of Arbitrators had the power to cancel *existing* mineral agreements pursuant to Section 77 of the Mining Act. . . . These pronouncements did not undo or abandon the distinction, clarified in *Gonzales*, between judicial questions and mining disputes."[11]

The crux of this case relates to a matter that is beyond the competence of the DENR Panel of Arbitrators. It does not pertain to the intricacies and specifications of mining operations. Rather, it pertains to the legal status of petitioners and the rights or

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web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 11 [Per *J*. Velasco, Jr., Third Division].

[11] *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 11 [Per *J*. Velasco, Jr., Third Division].

inhibitions accruing to them on account of their status. It pertains to a judicial question.

II

On the applicability of the Grandfather Rule

I maintain the position I elucidated in my Dissent to the April 21, 2014 Decision. The Control Test, rather than the Grandfather Rule, finds priority application in reckoning the nationalities of corporations engaged in nationalized economic activities.

The Grandfather Rule finds no basis in the text of the 1987 Constitution. It is true that the records of the Constitutional Commission "indicate an affirmative reference to the Grandfather Rule."[12] However, whatever references these records make to the Grandfather Rule is not indicative of a consensus among all members of the Constitutional Commission. At most, these references are advisory and not binding on this court.[13] Ultimately, what is controlling is the text of the Constitution itself. This text is silent on the precise means of reckoning foreign ownership.

In contrast, the Control Test is firmly enshrined by congressional dictum in a statute, specifically, Republic Act No. 8179, otherwise known as the Foreign Investments Act (FIA).

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[12] *Id*. at 34.

[13] To reiterate what I stated in my dissent in *Narra Nickel v. Redmont,* G.R. No. 195580, April 21, 2014,<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf>36 [Per *J.* Velasco, Jr., Third Division]:

In the final analysis, the records of the Constitutional Commission do not bind this court. As Charles P. Curtis, Jr. said on the role of history in constitutional exegesis:

The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.

As this court has pointed out, "[t]he FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment."[14]

Section 3 (a) of the Foreign Investments Act defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines." In my Dissent to the April 21, 2014 Decision:

> This is a definition that is consistent with the first part of paragraph 7 of the 1967 SEC Rules, which [originally articulated] the Control Test: "[s]hares belonging to corporations or partnerships at least 60 per cent of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality."[15]

The Control Test serves the rationale for nationalization of economic activities. It ensures effective control by Filipinos and satisfies the requirement of beneficial ownership.

On the matter of control, my Dissent to the April 21, 2014 Decision explained that:

> It is a matter of transitivity[16] that if Filipino stockholders control a corporation which, in turn, controls another corporation, then the Filipino stockholders control the latter corporation, albeit indirectly or through the former corporation.
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> An illustration is apt.

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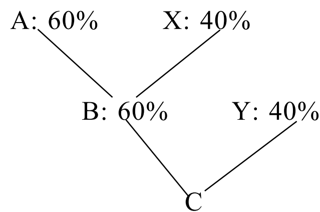
[14] *Gamboa v. Teves,* G.R. No. 176579, October 9, 2012, 682 SCRA 397, 435 [Per *J.* Carpio, *En Banc*].

[15] *J.* Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 37 [Per J. Velasco, Jr., Third Division].

[16] *I.e.*, " ([o]f a relation) such that, if it applies between successive members of a sequence, it must also apply between any two members taken in order. For instance, if A is larger than B, and B is larger than C, then A is larger than C" <http://www.oxforddictionaries.com/us/definition/american_english/transitive>.

Suppose that a corporation, "C", is engaged in a nationalized activity requiring that 60% of its capital be owned by Filipinos and that this 60% is owned by another corporation, "B", while the remaining 40% is owned by stockholders, collectively referred to as "Y". Y is composed entirely of foreign nationals. As for B, 60% of its capital is owned by stockholders collectively referred to as "A", while the remaining 40% is owned by stockholders collectively referred to as "X". The collective A, is composed entirely of Philippine nationals, while the collective X is composed entirely of foreign nationals. (N.b., in this illustration, capital is understood to mean "shares of stock entitled to vote in the election of directors," per the definition in *Gamboa*[17]). Thus:



By owning 60% of B's capital, A controls B. Likewise, by owning 60% of C's capital, B controls C. From this, it follows, as a matter of transitivity, that A controls C; albeit indirectly, that is, through B.

This "control" holds true regardless of the aggregate foreign capital in B and C. As explained in *Gamboa*, control by stockholders is a matter resting on the ability to vote in the election of directors:

> Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.[18]

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[17] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 723 and 726 [Per J. Carpio, En Banc] as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> [Per *J.* Velasco, Jr., Third Division].

[18] *Id.* at 725.

B will not be outvoted by Y in matters relating to C, while A will not be outvoted by X in matters relating to B. Since all actions taken by B must necessarily be in conformity with the will of A, anything that B does in relation to C is, in effect, in conformity with the will of A. No amount of aggregating the foreign capital in B and C will enable X to outvote A, nor Y to outvote B.

In effect, A controls C, through B. Stated otherwise, the collective Filipinos in A, *effectively* control C, through their control of B.[19]

From the definition of "beneficial owner or beneficial ownership" provided by the Implementing Rules and Regulations (amended 2004) of Republic Act No. 8799, otherwise known as the Securities Regulation Code, "there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power."[20] The Implementing Rules use "and/or"; thus, these are alternative means which may or may not concur.

On the first — voting power — my Dissent to the April 21, 2014 Decision pointed out that:

Voting power, as discussed previously, ultimately rests on the controlling stockholders of the controlling investor corporation. To go back to the previous illustration, voting power ultimately rests on A, it having the voting power in B which, in turn, has the voting power in C.[21]

On the second — investment returns or power — the same Dissent pointed out that:

As to investment returns or power, it is ultimately A which enjoys investment power. It controls B's investment decisions – including

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[19] *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 39 [Per *J.* Velasco, Jr., Third Division].

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

[21] *Id*. at 44.

the disposition of securities held by B – and (again, through B) controls C's investment decisions.

Similarly, it is ultimately A which benefits from investment returns generated through C. Any income generated by C redounds to B's benefit, that is, through income obtained from C, B gains funds or assets which it can use either to finance itself in respect of capital and/or operations. This is a direct benefit to B, itself a Philippine national. This is also an indirect benefit to A, a collectivity of Philippine nationals, as then, its business – B – not only becomes more viable as a going concern but also becomes equipped to funnel income to A.

Moreover, beneficial ownership need not be direct. A controlling shareholder is deemed the indirect beneficial owner of securities (e.g., shares) held by a corporation of which he or she is a controlling shareholder. Thus, in the previous illustration, A, the controlling shareholder of B, is the indirect beneficial owner of the shares in C to the extent that they are held by B.[22]

However, 60 percent equity ownership is but a minimum. It is in this regard that the Dissent to the April 21, 2014 Decision recognized that the Grandfather Rule properly finds application as a "supplement" to the Control Test:

Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation.

In *Gamboa*, "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required."[23] ***With this in mind, the Grandfather Rule may be used as a supplement to the Control Test, that is, as a further check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos.***

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[22] *Id*.

[23] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 730 [Per *J*. Carpio, *En Banc*], as cited in *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 46 [Per *J*. Velasco, Jr., Third Division].

For instance, Department of Justice Opinion No. 165, series of 1984, identified the following "significant indicators" or badges of "dummy status":

1. That the foreign investor provides practically all the funds for the joint investment undertaken by Filipino businessmen and their foreign partner[;]
2. That the foreign investors undertake to provide practically all the technological support for the joint venture[; and]
3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.[24]

In instances where methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise, the ostensible control vested by ownership of 60% of a corporation's capital may be pierced. Then, the Grandfather Rule allows for a further, more exacting examination of who actually controls and benefits from holding such capital.[25]

The majority's Resolution denying the present Motion for Reconsideration recognizes that the Grandfather Rule alone does not suffice for reckoning Filipino and foreign equity ownership in corporations engaged in nationalized economic activities. The majority echoes the characterization of the applicability of the Grandfather Rule as only supplementary[26] and explains:

The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result to an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it**

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[24] Sec. of Justice Op No. 165, s. 1984, as cited in *J.* Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 47 [Per *J.* Velasco, Jr., Third Division].

[25] *J.* Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 46-47 [Per *J.* Velasco, Jr., Third Division].

[26] *Id.*

is only when the Control Test is first complied with that the Grandfather Rule may be applied. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.

On the other hand, **a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation *if there is no doubt* as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule.** As a corollary rule, even if the 60-40 Filipino to foreign equity is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is necessary *if doubt exists* as to the *locus* of the "beneficial ownership" and "control."**[27]

III

Proceeding from the actions of the DENR Panel of Arbitrators is improper

Following the above-quoted portion in its discussion, the majority states that "[i]n this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary."[28]

The majority then proceeds to an analysis of the equity structures of petitioners. The analysis notes that 59.97% of Narra's 10,000 shares[29] is held by Patricia Louise Mining and Development Corporation (Patricia Louise), 65.96% of whose shares is, in turn, held by Palawan Alpha South Resources Development Corporation (PASRDC). It adds that 59.97% of

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[27] *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, 12 [Per *J.* Velasco, Jr., Special Third Division Resolution]. Emphasis and underscoring from the original, citation omitted.

[28] *Id.*

[29] The majority's Resolution fails to specify if these are all common shares.

Tesoro's 10,000 common shares is held by Sara Marie Mining, Inc. (Sara Marie), a Filipino corporation, 66.63% of whose shares is, in turn, held by Olympic Mines and Development Corporation (Olympic), another Filipino corporation. Finally, 59.97% of McArthur's 10,000 common shares is held by Madridejos Mining Corporation (Madridejos), a Filipino corporation, 66.63% of whose shares is, in turn, held by Olympic.

The majority also notes that 39.98% of Narra's shares is held by Canadian corporation MBMI Resources, Inc. (MBMI), while 39.98% of Tesoro's and McArthur's common shares is held by MBMI.[30] It adds that in the case of the majority shareholder of Narra (i.e., Patricia Louise), 33.96% of its shares is owned by MBMI, while in the cases of the respective majority shareholders of Tesoro and McArthur (i.e., Sara Marie, and Madridejos, respectively), 33.31% of their shares is held by MBMI.

The respective Filipino majority shareholders of Patricia Louise, Sara Marie, and Madridejos (i.e., PASRDC in the case of Patricia Louise, and Olympic in the cases of Sara Marie and Madridejos) did not pay for shares. Instead, MBMI paid for their respective paid-up capital. The majority concludes, applying the Grandfather Rule, that a foreign corporation — MBMI — breached the permissible maximum of 40% foreign equity participation in the three (3) petitioner corporations and that petitioners are foreign corporations not entitled to mineral production sharing agreements.

My Dissent to the April 21, 2014 Decision noted the inadequacy of relying merely on the denomination of shares as common or preferred:

> Proceeding from the findings of the Court of Appeals in its October 1, 2010 decision in CA-G.R. SP No. 109703, it appears that at least 60% of equities in Narra, Tesoro, and McArthur is owned by Philippine nationals. Per this initial analysis, Narra, Tesoro, and

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[30] The majority's Resolution also fails to specify if these are all common shares.

McArthur ostensibly satisfy the requirements of the Control Test in order that they may be deemed Filipino corporations.

Attention must be drawn to how these findings fail to indicate which (fractional) portion of these equities consist of "shares of stock entitled to vote in the election of directors" or, if there is even any such portion of shares which are not entitled to vote. These findings fail to indicate any distinction between common shares and preferred shares (not entitled to vote). Absent a basis for reckoning non-voting shares, there is, thus, no basis for diminishing the 60% Filipino equity holding in Narra, Tesoro, and McArthur and undermining their having ostensibly satisfied the requirements of the Control Test in order to be deemed Filipino corporations qualified to enter into MPSAs.[31]

It is the majority's position that the mere reckoning of how shares are denominated — whether common or preferred — suffices. I, however, proffer an analysis that requires looking into the actual voting rights vested on each class of shares. While it is true that preferred shares are generally viewed as non-voting shares, a conclusion that the preferred shares involved in this case are totally bereft of voting rights is not warranted by a cursory consideration of how they are denominated.

The same Dissent conceded that a "more thorough consideration . . . could yield an entirely different conclusion."[32] This is what the majority endeavors to embark on. However, it is improper to proceed, as the majority does, from the action of a body without competence and jurisdiction as well as the imprudent acts of forum shopping of Redmont, and, in the process, lend legitimacy to the DENR Panel of Arbitrators' and Redmont's illicit actions:

Having made these observations, it should not be discounted that a more thorough consideration – as has been intimated in the earlier

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[31] *J*. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 47-48 [Per . Velasco, Jr., Third Division].

[32] *Id*. at 52.

disquisition regarding how 60% Filipino equity ownership is but a minimum and how the Grandfather Rule may be applied to further examine actual Filipino ownership – could yield an entirely different conclusion. In fact, Redmont has asserted that such a situation avails.

However, the contingencies of this case must restrain the court's consideration of Redmont's claims. Redmont sought relief from a body without jurisdiction – the Panel of Arbitrators – and has engaged in blatant forum shopping. It has taken liberties with and ran amok of rules that define fair play. It is, therefore, bound by its lapses and indiscretions and must bear the consequences of its imprudence.[33]

IV

Redmont engaged in blatant forum shopping

It would be remiss of this court to overlook Redmont's acts of forum shopping. To do so would enable Redmont to profit from its own imprudence and for this court to countenance a manifest disrespect for courts and quasi-judicial bodies. As extensively discussed in my Dissent to the April 21, 2014 Decision:

Redmont has taken at least four (4) distinct routes all seeking substantially the same remedy. Stripped of their verbosity and legalese, Redmont's petitions before the DENR Panel of Arbitrators, complaint before the Regional Trial Court, complaint before the Securities and Exchange Commission, and petition before the Office of the President all seek to prevent Narra, Tesoro, and McArthur as well as their co-respondents and/or co-defendants from engaging in mining operations. Moreover, these are all grounded on the same cause (i.e., that they are disqualified from doing so because they fail to satisfy the requisite Filipino equity ownership) and premised on the same facts or circumstances.

Redmont has created a situation where multiple tribunals must rule on the extent to which the parties adverse to Redmont have met the requisite Filipino equity ownership. It is certainly possible that conflicting decisions will be issued by the various tribunals over which Redmont's various applications for relief have been lodged.

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[33] *Id.*

It is, thus, glaring that the very evil sought to be prevented by the rule against forum shopping is being foisted by Redmont.

. . . .

It strains credulity to accept that Redmont's actions have not been willful. By filing petitions with the DENR Panel of Arbitrators, Redmont started the entire series of events that have culminated in: first, the present petition; second, the de-consolidated G.R. No. 205513; and third, at least one (1) more petition filed with this court.[34]

Following the adverse decision of the Panel of Arbitrators, Narra, Tesoro, and McArthur pursued appeals before the Mines Adjudication Board. This is all but a logical consequence of the POA's adverse decision. While the appeal before the MAB was pending, Redmont filed a complaint with the SEC and then filed a complaint with the Regional Trial Court to enjoin the MAB from proceeding. Redmont seems to have conveniently forgotten that it was its own actions that gave rise to the proceedings before the MAB in the first place. Moreover, even as all these were pending and in various stages of appeal and/or review, Redmont still filed a petition before the Office of the President.

Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure, the actions subject of these consolidated petitions must be dismissed with prejudice.[35]

Apart from the Petition subject of the present Motion for Reconsideration, two (2) other cases involving the same parties are now pending with this court. The first, G.R. No. 205513, relates to a Complaint for Revocation of the certificates of registration of Narra, Tesoro, and McArthur filed by Redmont with the Securities and Exchange Commission. G.R. No. 205513 was consolidated but later de-consolidated with this case. The second is a case pending with this court's First Division. This relates to the Petition filed by Redmont with the Office of the President in which it sought the cancellation of the financial or technical assistance agreement (FTAA) applications of Narra, Tesoro, and McArthur.

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[34] Arising from Redmont's Petition with the Office of the President.

[35] *Id.* at 53-55.

That there are now three (3) simultaneously pending Petitions with this court is the result of Redmont's contemporaneously having sought remedies from:

1. The DENR Panel of Arbitrators;
2. The Securities and Exchange Commission;
3. The Regional Trial Court, Quezon City; and
4. The Office of the President.

While this and the two other cases pending with this court diverge as to the procedural routes they have taken, they all boil down to the central issue of the nationalities of Narra, Tesoro and McArthur. It is manifest that Redmont engaged in blatant forum shopping. The April 21, 2014 Decision effectively rewarded Redmont's abuse of court processes. Worse, maintaining the status quo of having a multiplicity of cases reinforces the stance of leaving Redmont to reap the benefits of its unconscionable scheme.

ACCORDINGLY, I vote to grant the Motion for Reconsideration. I reiterate my vote to **GRANT** the Petition for Review on Certiorari subject of G.R. No. 195580. The assailed Decision dated October 1, 2010 and the assailed Resolution dated February 15, 2011 of the Court of Appeals Seventh Division in CA-G.R. SP No. 109703, which reversed and set aside the September 10, 2008 and July 1, 2009 Orders of the Mines Adjudication Board, should be **SET ASIDE and DECLARED NULL AND VOID.** The September 10, 2008 Order of the Mines Adjudication Board dismissing the Petitions filed by Redmont Consolidated Mines with the DENR Panel of Arbitrators must be **REINSTATED.**

MARVIC M.V.F. LEONEN

Associate Justice

THIRD DIVISION

[G.R. No. 197011. January 28, 2015]

ESSENCIA Q. MANARPIIS, *petitioner, vs.* **TEXAN PHILIPPINES, INC., RICHARD TAN and CATHERINE P. RIALUBIN-TAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PLEADINGS; VERIFICATION OF A PLEADING IS A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT INTENDED TO SECURE THE ASSURANCE THAT THE MATTERS ALLEGED IN A PLEADING ARE TRUE AND CORRECT.—** [W]e have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.

2. **ID.; APPEALS; APPEAL BY *CERTIORARI* TO SUPREME COURT; AS A RULE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE, AND THE SUPREME COURT WILL NOT REVIEW THEM ON APPEAL; EXCEPTIONS.—** Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal. However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (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) the CA goes

beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF BUSINESS, AS VALID CAUSE FOR TERMINATION OF EMPLOYMENT; REQUIREMENTS.—** Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. Closure of business as an authorized cause for termination of employment is governed by Article 283 of the Labor Code, as amended. If the business closure is due to serious losses or financial reverses, the employer must present sufficient proof of its actual or imminent losses; it must show proof that the cessation of or withdrawal from business operations was *bona fide* in character. A written notice to the DOLE thirty days before the intended date of closure is also required, the purpose of which is to inform the employees of the specific date of termination or closure of business operations, and which must be served upon each and every employee of the company one month before the date of effectivity to give them sufficient time to make the necessary arrangement. The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be **bona fide** in character. And the burden of proving such falls upon the employer.

4. **ID.; ID.; ID.; ABANDONMENT OF WORK, AS A JUST GROUND FOR DISMISSAL; ELEMENTS, EXPLAINED.—** We have laid down the two elements which must concur for a valid abandonment, *viz*: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. Abandonment as a just ground

for dismissal requires the *deliberate, unjustified refusal* of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment. Furthermore, it is well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.

5. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, AS A GROUND FOR DISMISSAL; UNSUPPORTED BY SUFFICIENT PROOF, LOSS OF CONFIDENCE IS WITHOUT BASIS AND MAY NOT BE SUCCESSFULLY INVOKED AS A GROUND FOR DISMISSAL.—** On the issue of loss of confidence, we have held that proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position. Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, as in the case at bar, and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.

6. **ID.; ID.; ID.; ILLEGAL DISMISSAL; REMEDY; WHERE REINSTATEMENT IS NO LONGER VIABLE AS AN OPTION, SEPARATION PAY EQUIVALENT TO ONE MONTH SALARY FOR EVERY YEAR OF SERVICE SHOULD BE AWARDED AS AN ALTERNATIVE.—** The normal consequences of petitioner's illegal dismissal are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to

one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages. Given the strained relations between the parties, the award of separation pay, in lieu of reinstatement, is in order.

7. **MERCANTILE LAW; CORPORATIONS; IN LABOR CASES, THE SUPREME COURT HAS HELD CORPORATE DIRECTORS AND OFFICERS SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT OF EMPLOYEES DONE WITH MALICE OR BAD FAITH.—** It is basic that a corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. However, in certain exceptional situations, solidary liability may be incurred by corporate officers. In labor cases for instance, this Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or bad faith. We sustain the NLRC's conclusion that the schemes implemented by the respondents to justify petitioner's baseless dismissal, and the manner by which such schemes were effected showed malice and bad faith on their part. Consequently, its affirmance of the order of the LA that the amounts awarded to petitioner are "payable in *solidum* by respondents" is proper. The NLRC likewise correctly upheld the award of attorney's fees considering that petitioner was assisted by a private counsel to prosecute her illegal dismissal complaint and enforce her rights under our labor laws.

APPEARANCES OF COUNSEL

Tanada Vivo & Tan for petitioner.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

VILLARAMA, JR., *J*.:

Before us is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated March 24, 2010, and Resolution[2] dated May 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 106661. The CA reversed and set aside the Decision[3] dated January 25, 2008 and Resolution[4] dated September 22, 2008 of the First Division of the National Labor Relations Commission (NLRC) in NLRC CA No. 029806-01, which affirmed the Decision[5] dated June 28, 2001 of the Labor Arbiter (LA) in NLRC Case No. 00-08-04110-2000.

Texan Philippines, Inc. (TPI), which is owned and managed by Catherine Rialubin-Tan and her Singaporean husband Richard Tan (respondents), is a domestic corporation engaged in the importation, distribution and marketing of imported fragrances and aroma and other specialized products and services. In July 1999, respondents hired Essencia Q. Manarpiis (petitioner) as Sales and Marketing Manager of the company's Aroma Division with a monthly salary of ₱33,800.00.[6]

Claiming insurmountable losses, respondents served a written notice (July 27, 2000) addressed to all their employees that TPI will cease operations by August 31, 2000.[7]

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[1] *Rollo,* pp. 82-106. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Amelita G. Tolentino and Mario V. Lopez.

[2] *Id*. at 48-51.

[3] *Id*. at 68-77. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

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

[5] Records (Vol. 1), pp. 195-208. Penned by Labor Arbiter Melquiades Sol D. Del Rosario.

[6] *Id*. at 15, 52, 93-95.

[7] *Id*. at 28.

On August 7, 2000, petitioner filed a complaint for illegal dismissal, non-payment of overtime pay, holiday pay, service incentive leave pay, unexpired vacation leave and 13th month pay and with prayer for moral and actual damages. Subsequently, petitioner amended her complaint to state the true date of her dismissal which is July 27, 2000 and not August 31, 2000. She averred that on the same day she was served with notice of company closure, respondents barred her from reporting for work and paid her last salary up to the end of July 2000.[8]

On September 18, 2000, petitioner received the following memorandum[9]:

September 15, 2000

MEMO TO : **MS. ESSENCIA MANARPIIS**
Sales and Marketing Manager
Aroma Division

SUBJECT : **Notice Of Investigation And Grounding**

Dear Ms. Manarpiis,

You are hereby notified that an investigation will be conducted on 20 September 2000 at 2:00 p.m. in our office regarding your alleged violation of company rules and regulations, specifically:

I (par. B) - - Fraudulent Expense/Disbursement expenses
I (par. G) - - Collusion/Connivance with Intent to Defraud
II (Section 6) - - Sabotage
II (Section 12) - - Loss of Confidence
III (Section 2) - - Libel/Slander
III (Section 8 par. e) - - Other acts of Insubordination
V (par. C & D) - - AWOL/Abandonment
V (par. I) - - Committing other acts of gross inefficiency or incompetence

said acts constitutive of gross misconduct, gross insubordination and dishonesty. You may bring your witnesses and counsel if you

[8] *Id*. at 2, 8-10.

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

so desire. In the meantime, you will not be allowed to perform your usual functions, but will instead report to the undersigned.

Additionally, you are directed to submit to the undersigned your explanation in writing, within (72) hours from receipt hereof (but in no case later than 20 September 2000), why no appropriate disciplinary action and/or penalties may be imposed against you relative to the foregoing.

Failure to submit said written explanation within the prescribed period and/or attend the investigation hearing on 20 September 2000 shall constitute an implied admission of the charges and waiver on your part to due process.

For your information and compliance.

(SGD.) **RICHARD TAN**
(President)

Petitioner alleged that as sales and marketing manager, she received the agreed commission based on actual sales collection on the first quarter of 2000 and was expecting to also receive such commission on the 2nd, 3rd and 4th quarters. However, on July 27, 2000, after receiving a text message from respondent Richard Tan, she proceeded to her office and learned that her table drawers were forcibly opened and her files confiscated. She protested the company closure asserting that the alleged business losses were belied by TPI's financial documents. But despite her pleas, she was asked to pack up her things and by the end of the month her salary was discontinued. She then received the memorandum regarding the company closure and was required to turn over the company car, pager and cellphone. She was told not to report for work anymore.[10]

After receiving the September 15, 2000 memorandum, petitioner's counsel sent a reply stating that there was no point in the investigation because respondents already dismissed petitioner purportedly on the ground of cessation of business due to insurmountable losses, and also it was impossible for petitioner to respond to the charges which are devoid of particulars

[10] *Id.* at 15-16.

as to the alleged irregularities she committed. It was pointed out that respondents should have investigated the supposed violations of company rules and fraudulent acts earlier and not when petitioner had filed an illegal dismissal complaint.[11]

Subsequently, petitioner received the following memorandum:[12]

September 25, 2000

TO	:	**MS. ESSENCIA MANARPIIS** Sales and Marketing Manager Aroma Division
SUBJECT	:	**NOTICE OF TERMINATION**

Ms. Manarpiis,

This is to inform you that your employment with the Company is terminated effective today, September 25, 2000, due to Dishonesty, Loss of Confidence, and Abandonment of Work.

An internal audit of the Company shows that several obligations of the Company were paid twice to the same supplier. Considering the level of your position, the inescapable conclusion is that you have colluded with the Company supplier to defraud the Company of its finances.

Moreover, you have fraudulently caused to be reimbursed representation expenses and other expense statements purporting to be that of your sales representatives while in truth and in fact they were yours, and you received the corresponding payments therefor.

Also, your attendance record showed that you have been absent without official leave (AWOL) since August 3, 2000 up to date.

A notice of AWOL dated September 14, 2000 has been sent to you but you refused to accept the same, much less, refused to act on it.

For your information and guidance

(SGD.) **RICHARD TAN**
President

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[11] *Id*. at 33-34.

[12] *Id*. at 35.

Believing that her dismissal was without just cause, petitioner prayed for reinstatement if still viable, and if not, award of separation pay with back wages from August 1, 2000, and payment of her monetary claims for sales commissions, pro-rated 13th month pay, five days service incentive leave pay and sick leaves, as well as moral and exemplary damages plus attorney's fees.[13]

Respondents denied the charge of illegal dismissal and explained that TPI's closure was averted by a new financing package obtained by respondent Richard Tan. They asserted that the requisite notices of business closure to government authorities and to their employees were complied with, and notwithstanding that TPI has in fact continued its operations, petitioner was found to have committed infractions resulting in loss of confidence which was the ground for the termination of her employment. They likewise averred that respondent Rialubin-Tan gave specific instructions to petitioner for her to continue reporting for work even after August 31, 2000 but she instead went AWOL and subsequently abandoned her job, to the utmost prejudice of the company.[14]

On June 28, 2001, LA Melquiades Sol D. Del Rosario rendered a Decision declaring the dismissal of petitioner as illegal:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal to be illegal. Consequently, she should be paid in solidum by respondents the following:

a) ₱304,200.00 as backwages as of May 31, 2001[;]

b) ₱101,400.00 as separation pay for 3 years[;]

c) 1% of the gross sales of complainant and .75% on other sales as determined by the parties as complainant's commissions;

d) 10% for and as attorney's fees of the money awards.

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[13] *Id*. at 21.

[14] *Id*. at 51-66.

SO ORDERED.[15]

Respondents appealed to the NLRC which affirmed the LA's decision. Their motion for reconsideration was also denied.

In a petition for *certiorari* filed with the CA, respondents argued that the subsequent termination of petitioner on the grounds of dishonesty, loss of confidence and abandonment, after TPI was able to regain financial viability, was made in view of the fact that commission of the said offenses surfaced only during the audit investigation conducted after notice of cessation of business operation was sent to the employees. Despite advice for her to continue reporting for work after August 31, 2000, the effectivity date of the intended closure, petitioner just stopped doing so and instead filed the complaint for illegal dismissal and likewise failed to turn over all company documents and records in her possession. They also discovered that petitioner put up her own company "Vita VSI Scents," enticing clients to buy the same products they used to purchase from TPI.

By Decision dated March 24, 2010, the CA reversed the NLRC and ruled that petitioner was validly dismissed:

> **WHEREFORE**, the petition is hereby **GRANTED**. The assailed Decision dated January 25, 2008 and the Resolution dated September 22, 2008 of the National Labor Relations Commission are hereby **REVERSED** and **SET ASIDE**. Resultantly, Essencia Manarpiis' complaint for illegal dismissal against Texan Philippines, Inc., Richard Tan and Catherine Realubin-Tan is hereby **DISMISSED** for lack of merit. No costs.
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> **SO ORDERED**.[16]

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition arguing that the CA committed patent reversible errors when it: (1) granted the unverified/unsworn

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[15] *Id*. at 207-208.

[16] *Rollo,* p. 105.

certification of non-forum shopping accompanying respondents' petition for *certiorari*; (2) granted respondents' petition for *certiorari* without finding any grave abuse of discretion on the part of NLRC; (3) disturbed the consistent factual findings of the LA and NLRC which were duly supported by substantial evidence and devoid of any unfairness and arbitrariness; and (4) substituted its own findings of facts to those of the LA and NLRC, the CA's findings being unsupported by substantial evidence.[17]

The petition is meritorious.

We first address petitioner's contention on the alleged formal infirmity of the petition for *certiorari* filed before the CA. Petitioner argued that the same was defective as the *jurat* therein was based on the mere community tax certificate of respondent Rialubin-Tan, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. Such ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.[18]

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.[19]

Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is

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[17] *Id.* at 27-28.

[18] *Medado v. Heirs of the Late Antonio Consing*, G.R. No. 186720, February 8, 2012, 665 SCRA 534, 543.

[19] *Id.* at 546, citing *Bello v. Bonifacio Security Services, Inc.*, G.R. No. 188086, August 3, 2011, 655 SCRA 143, 147-148.

limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal.[20]

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (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) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[21]

Considering that the findings of facts and the conclusions of the CA are contrary to those of the LA and the NLRC, we find it necessary to evaluate such findings.

On the issue of illegal dismissal, both the LA and NLRC found no just or authorized cause for the termination of petitioner's employment.

LA Del Rosario observed that respondents flip-flopped on the issue of petitioner's termination as when they claimed she was dismissed due to insurmountable losses so that TPI's personnel were notified of the company closure effective August 31, 2000, and at the same time they accused petitioner of fraudulent acts and abandonment of work resulting in loss of trust and confidence which caused her dismissal. He also found there

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[20] *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar,* 637 Phil. 244, 251 (2010), citing *Amigo v. Teves,* 96 Phil. 252 (1954).

[21] *Macahilig v. National Labor Relations Commission,* 563 Phil. 683, 690 (2007).

was no compliance with the legal requisites of the said grounds for dismissal under Article 283 (business closure) such as the lack of termination report sent to the Department of Labor and Employment (DOLE), financial documents which are audited and signed by an independent auditor, and the two-notice requirement sent to the last known address of the employee alleged to have abandoned work under Book V, Rule XIV, Section 2 of the Omnibus Rules Implementing the Labor Code. It was noted that while TPI's financial documents have BIR stampmark, they were not shown to have been prepared by an independent auditor.

The NLRC upheld the LA's ruling that petitioner's dismissal was not valid, *viz*:

As between the above, conflicting allegations, We find the version of the complainant more credible. Record of the instant case would provide that other than respondents' bare allegations that complainant was instructed to continue working even beyond 31 August 2000, no evidence was presented to substantiate the same. If respondents could easily issue a notice of business closure to all its employees, and at the same time, immediately require the complainant to surrender all company properties assigned to her, We could not understand why they could not easily issue another letter, this time, intended only for the complainant informing her that her employment was still necessary.

Relative to the company's closure due to business losses, prevailing jurisprudence would dictate that the same should be substantiated by competent evidence. Financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of the company. To exempt an employer [from] the payment of separation pay, he or she must establish by sufficient and convincing evidence that the losses were serious, substantial and actual x x x.

In the instant case, respondents may have presented before the Labor Arbiter its Statement of Income for the year 1999. While its preparation may be in compliance with the requirements of the Bureau of Internal Revenue for taxation purposes, based on the jurisprudence provided above, the same would not suffice for purposes of respondents' defense in the instant case. In their appeal, respondents

alleged that on the basis of the audited Statement of Income and Retained Earnings For the Year Ending 31 December 2000, the company incurred a net loss of almost half a million pesos. Assuming the same to be true since we cannot find a copy of said statement attached to [the] record, it would appear that the company had attained a better position in year 2000 as compared to year 1999 when they incurred a net loss of more than Two Million Pesos. Furthermore, said evidence is already immaterial considering that the company's intended closure did not actually take effect.

Upon a finding that complainant was not instructed to continue working even beyond 31 August 2000 but was told not to report to work upon receipt of the notice of company's closure, it certainly follows that respondents would no longer inform complainant of the company's continued operation after respondent Tan had allegedly succeeded in searching for funds. In fact, We are not even persuaded that the company's closure was prevented by the new funds sought by respondent Tan when in the first place, there was no intended closure at all but only a decision to dismiss complainant in a manner that would enable respondents evade liabilities under the Labor Code.

With regard to the alleged violation of company rules and regulations, We agree with the finding that respondent[s'] acts of issuing the two notices setting the case [for] investigation were mere afterthoughts. As highlighted in the assailed Decision, the first notice was issued after respondents had already received the summons in the instant case. More importantly, the above discussion would provide that prior to issuance of said first notice, complainant was already illegally dismissed. Furthermore, assuming for the sake of argument that complainant was not yet terminated, a reading of the said first notice would show that it does not conform with the requirements of due process. The same had failed to discuss the circumstances under which each of the charges therein was committed by the complainant. As can be noted from the letter dated 19 September 2000 sent by complainant's counsel to respondent Tan, it was impossible for his client to submit a written explanation thereto since the notice to explain is devoid of particulars regarding the alleged irregularities.

As a consequence of complainant['s] double termination, initially through the purported cessation of business operations, and thereafter, by imputing offenses violative of company rules and regulations, we agree with the finding [that] she was illegally dismissed, and as

such, entitled to backwages. She would have been entitled to reinstatement but we believe that the charges lodged by the respondents against the complainant had rendered reinstatement non-viable. Thus, she should be granted separation pay instead.[22] (Citations omitted)

The CA, however, considered the evidence of respondents sufficient to prove the alleged business losses and their good faith in resorting to closure of the company. It cited the 1999 Annual Income Tax Return showing a net loss of ₱2,290,580.48 and financial statement indicating a net loss of ₱2,301,228.61 for the year ended December 31, 1999; respondents' claim that it was forced to sell six company cars; and the DOLE termination report.

On the other grounds invoked by respondents to justify petitioner's termination, the CA cited the following infractions: (a) several company obligations towards a supplier which were paid twice during her term as Marketing and Sales Manager; (b) company funds procured by petitioner, represented to be "under the table" expenditures for the Bureau of Customs which she cannot explain when queried; (c) divulging confidential company matters to the customers; and (d) establishing her own company while still employed with TPI.

We reverse the CA and reinstate the LA's decision as affirmed by the NLRC.

Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. Closure of business as an authorized cause for termination of employment is governed by Article 283[23] of the Labor Code, as amended.

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[22] *Rollo*, pp. 73-75.

[23] **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

If the business closure is due to serious losses or financial reverses, the employer must present sufficient proof of its actual or imminent losses; it must show proof that the cessation of or withdrawal from business operations was *bona fide* in character.[24] A written notice to the DOLE thirty days before the intended date of closure is also required, the purpose of which is to inform the employees of the specific date of termination or closure of business operations, and which must be served upon each and every employee of the company one month before the date of effectivity to give them sufficient time to make the necessary arrangement.[25]

The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be **bona fide** in character. And the burden of proving such falls upon the employer.[26]

After evaluating the evidence on record, we uphold the factual findings and conclusions of the labor tribunals that petitioner was dismissed without just or authorized cause, and that the announced cessation of business operations was a subterfuge for getting rid of petitioner. While the introduction of additional

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and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) 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.

[24] *Reahs Corporation v. NLRC,* 337 Phil. 698, 705 (1997), citing *Catatista v. NLRC,* 317 Phil. 54 (1995) and *Maya Farms Employees Organization v. NLRC*, G.R. No. 106256, December 28, 1994, 239 SCRA 508.

[25] *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, 535 Phil. 675, 685 (2006), as cited in *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. Nos. 173154 & 173229, December 9, 2013, 711 SCRA 618, 627-628.

[26] *Espina v. Court of Appeals,* 548 Phil. 255, 275 (2007), citing *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 460 Phil. 583, 590 (2003) and *J.A.T. General Services v. NLRC,* 465 Phil. 785, 795 (2004).

evidence before the NLRC is not proscribed, the said tribunal was still not persuaded by the company closure purportedly averted only by the alleged fresh funding procured by respondent Tan, for the latter claim remained unsubstantiated. The CA's finding of serious business losses is not borne by the evidence on record. The financial statements supposedly bearing the stamp mark of BIR were not signed by an independent auditor. Besides, the non-compliance with the requirements under Article 283 of the Labor Code, as amended, gains relevance in this case not for the purpose of proving the illegality of the *company closure or cessation of business,* which did not materialize, but as an indication of bad faith on the part of respondents in hastily terminating petitioner's employment. Under the circumstances, the subsequent investigation and termination of petitioner on grounds of dishonesty, loss of confidence and abandonment of work, clearly appears as an afterthought as it was done only after petitioner had filed an illegal dismissal case and respondents have been summoned for hearing before the LA.

We have laid down the two elements which must concur for a valid abandonment, viz: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[27] Abandonment as a just ground for dismissal requires the *deliberate, unjustified refusal* of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[28]

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[27] *Trendline Employees Association-Southern Philippines Federation of Labor (TEA-SPFL) v. NLRC,* 338 Phil. 681, 686 (1997), citing *Labor v. NLRC,* 318 Phil. 219, 240 (1995).

[28] *GSP Manufacturing Corporation v. Cabanban*, 527 Phil. 452, 454 (2006), citing *R.P. Dinglasan Construction, Inc. v. Atienza,* 477 Phil. 305, 314 (2004); *Samarca v. Arc-Men Industries, Inc.,* 459 Phil. 506, 516 (2003); *Phil. Industrial Security Agency Corp. v. Dapiton,* 377 Phil. 951, 959 & 960 (1999); and *Samahan ng mga Manggagawa sa Bandolino v. NLRC*, 341 Phil. 635, 646 (1997).

Furthermore, it is well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment.[29] An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.[30]

Abandonment in this case was a trumped up charge, apparently to make it appear that petitioner was not yet terminated when she filed the illegal dismissal complaint and to give a semblance of truth to the belated investigation against the petitioner. Petitioner did not abandon her work but was told not to report for work anymore after being served a written notice of termination of company closure on July 27, 2000 and turning over company properties to respondent Rialubin-Tan.

On the issue of loss of confidence, we have held that proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[31] Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, as in the case at bar, and the

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[29] *Concrete Solutions, Inc./Primary Structures Corporation v. Cabusas,* G.R. No. 177812, June 19, 2013, 699 SCRA 44, 56-57, citing *New Ever Marketing, Inc. v. Court of Appeals,* 501 Phil. 575, 587 (2005).

[30] *GSP Manufacturing Corporation v. Cabanban*, *supra* note 28, at 455.

[31] *P.J. Lhuillier Inc. v. National Labor Relations Commission*, 497 Phil. 298, 311 (2005), citing *Reyes v. Zamora*, 179 Phil. 71, 89 (1979).

loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.[32]

Here, loss of confidence was belatedly raised by the respondents who initiated an investigation on the alleged irregularities committed by petitioner only after the latter had questioned the legality of her earlier dismissal due to the purported company closure. As correctly observed by the NLRC, assuming to be true that respondents had not yet actually dismissed the petitioner, the notice of cessation of operations (memo dated July 27, 2000) addressed to all employees never mentioned the supposed charges against the petitioner who was also never issued a separate memorandum to that effect. Moreover, the turn over of company properties by petitioner on the same date as demanded by respondent Rialubin-Tan belies the latter's claim that she verbally instructed the former to continue reporting for work in view of the audit of the company's finances. Indeed, considering the gravity of the accusations of fraud against the petitioner, it is strange that respondents have not at least issued her a separate memorandum on her accountability for the alleged business losses.

To prove the dishonesty imputed to petitioner, respondents submitted before the NLRC a letter dated August 4, 2000 from one of TPI's suppliers advising the company of a supposed double payment made in February and March 2000. However, there is no showing that such payment was made or ordered by petitioner, and neither was it shown that this overpayment was reflected in the account books of TPI. Respondents likewise failed to prove their accusation that petitioner put up a competing business while she was still employed with TPI, and their bare allegation that petitioner divulged confidential company matters to customers. As to the supposed failure of petitioner to account for funds intended for "under the table" transactions at the Bureau of Customs, the same was never raised before the labor tribunals and not a shred of evidence was presented by respondent to prove this allegation.

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[32] *Id*. at 311-312, citing *Hernandez v. NLRC (Fifth Division),* 257 Phil. 275, 282 (1989), and *Labor v. NLRC, supra* note 27, at 242.

Apropos we recall our pronouncement in *Lima Land, Inc., et al. v. Cuevas*:[33]

> As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause. Thus, **when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed**.[34] (Emphasis supplied)

The normal consequences of petitioner's illegal dismissal are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages.[35] Given the strained relations between the parties, the award of separation pay, in lieu of reinstatement, is in order.

Finally, on the solidary liability of respondents Richard Tan and Catherine Rialubin-Tan for the monetary awards. It is basic

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[33] 635 Phil. 36 (2010).

[34] *Id*. at 53-54, citing *Marival Trading, Inc. v. National Labor Relations Commission,* 552 Phil. 762, 782 (2007), and *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, 494 Phil. 697, 728 (2005).

[35] *Golden Ace Builders v. Talde,* 634 Phil. 364, 369-370 (2010), citing *Macasero v. Southern Industrial Gases Philippines and/or Lindsay,* 597 Phil. 494, 501 (2009).

that a corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. However, in certain exceptional situations, solidary liability may be incurred by corporate officers. In labor cases for instance, this Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or bad faith.[36]

We sustain the NLRC's conclusion that the schemes implemented by the respondents to justify petitioner's baseless dismissal, and the manner by which such schemes were effected showed malice and bad faith on their part. Consequently, its affirmance of the order of the LA that the amounts awarded to petitioner are "payable in *solidum* by respondents" is proper. The NLRC likewise correctly upheld the award of attorney's fees considering that petitioner was assisted by a private counsel to prosecute her illegal dismissal complaint and enforce her rights under our labor laws.

WHEREFORE, the petition is **GRANTED.** The Decision dated March 24, 2010 and Resolution dated May 19, 2011 of the Court of Appeals in CA-G.R. SP No. 106661 are hereby **REVERSED** and **SET ASIDE**.

The Decision dated June 28, 2001 of the Labor Arbiter in NLRC Case No. 00-08-04110-2000, as affirmed by the Decision dated January 25, 2008 of the National Labor Relations Commission in NLRC CA No. 029806-01, is hereby **REINSTATED.**

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

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[36] *Alba v. Yupangco,* G.R. No. 188233, June 29, 2010, 622 SCRA 503, 507-508, citing *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 844-845 (1995).

SECOND DIVISION

[G.R. No. 199648. January 28, 2015]

FIRST OPTIMA REALTY CORPORATION, *petitioner, vs.* **SECURITRON SECURITY SERVICES, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALES; WHERE THERE IS MERELY AN OFFER BY ONE PARTY WITHOUT ACCEPTANCE OF THE OTHER, THERE IS NO CONTRACT; STAGES OF CONTRACT OF SALE; ENUMERATION.—** "When there is merely an offer by one party without acceptance of the other, there is no contract." To borrow a pronouncement in a previously decided case, The stages of a contract of sale are: (1) negotiation, starting from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) perfection, which takes place upon the concurrence of the essential elements of the sale; and (3) consummation, which commences when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment of the contract.

2. **ID.; ID.; ID.; ESSENTIAL ELEMENTS OF A CONTRACT OF SALE.—** [T]he essential elements of a contract of sale, namely, (1) consent or the meeting of the minds of the parties; (2) object or subject matter of the contract; and (3) price or consideration of the sale.

3. **ID.; ID.; ID.; IN A POTENTIAL SALE TRANSACTION, THE PRIOR PAYMENT OF EARNEST MONEY EVEN BEFORE THE PROPERTY OWNER CAN AGREE TO SELL HIS PROPERTY IS IRREGULAR, AND CANNOT BE USED TO BIND THE OWNER TO THE OBLIGATION OF A SELLER UNDER AN OTHERWISE PERFECTED CONTRACT OF SALE; RATIONALE.—** In a potential sale transaction, the prior payment of earnest money even before the property owner can agree to sell his property is irregular, and cannot be used to bind the owner to the obligations of a seller under an otherwise

perfected contract of sale; to cite a well-worn cliché, the carriage cannot be placed before the horse. The property owner-prospective seller may not be legally obliged to enter into a sale with a prospective buyer through the latter's employment of questionable practices which prevent the owner from freely giving his consent to the transaction; this constitutes a palpable transgression of the prospective seller's rights of ownership over his property, an anomaly which the Court will certainly not condone. An agreement where the prior free consent of one party thereto is withheld or suppressed will be struck down, and the Court shall always endeavor to protect a property owner's rights against devious practices that put his property in danger of being lost or unduly disposed without his prior knowledge or consent. As this *ponente* has held before, "[t]his Court cannot presume the existence of a sale of land, absent any direct proof of it." Nor will respondent's supposed payment be treated as a deposit or guarantee; its actions will not be dignified and must be called for what they are: they were done irregularly and with a view to acquiring the subject property against petitioner's consent.

APPEARANCES OF COUNSEL

Rodrigo Berenguer and Guno for petitioner.
Restituto M. Ancheta, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In a potential sale transaction, the prior payment of earnest money even before the property owner can agree to sell his property is irregular, and cannot be used to bind the owner to the obligations of a seller under an otherwise perfected contract of sale; to cite a well-worn cliché, the carriage cannot be placed before the horse. The property owner-prospective seller may not be legally obliged to enter into a sale with a prospective buyer through the latter's employment of questionable practices which prevent the owner from freely giving his consent to the transaction; this constitutes a palpable transgression of the

prospective seller's rights of ownership over his property, an anomaly which the Court will certainly not condone.

This Petition for Review on *Certiorari*[1] seeks to set aside: 1) the September 30, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 93715 affirming the February 16, 2009 Decision[3] of the Regional Trial Court (RTC) of Pasay City, Branch 115 in Civil Case No. 06-0492 CFM; and 2) the CA's December 9, 2011 Resolution[4] denying the herein petitioner's Motion for Reconsideration[5] of the assailed judgment.

Factual Antecedents

Petitioner First Optima Realty Corporation is a domestic corporation engaged in the real estate business. It is the registered owner of a 256-square meter parcel of land with improvements located in Pasay City, covered by Transfer Certificate of Title No. 125318 (the subject property).[6] Respondent Securitron Security Services, Inc., on the other hand, is a domestic corporation with offices located beside the subject property.

Looking to expand its business and add to its existing offices, respondent – through its General Manager, Antonio Eleazar (Eleazar) – sent a December 9, 2004 Letter[7] addressed to petitioner – through its Executive Vice-President, Carolina T. Young (Young) – offering to purchase the subject property at ₱6,000.00 per square meter. A series of telephone calls ensued, but only between Eleazar and Young's secretary;[8] Eleazar likewise personally

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[1] *Rollo*, pp. 9-42.

[2] *Id*. at 44-51; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr.

[3] *Id*. at 95-98; penned by Presiding Judge Francisco G. Mendiola.

[4] *Id*. at 68-69.

[5] *Id*. at 52-66.

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

[7] *Id*. at 76.

[8] Transcript of Stenographic Notes (TSN), Antonio Eleazar, February 5, 2008, pp. 9-12.

negotiated with a certain Maria Remoso (Remoso), who was an employee of petitioner.[9] At this point, Eleazar was unable to personally negotiate with Young or the petitioner's board of directors.

Sometime thereafter, Eleazar personally went to petitioner's office offering to pay for the subject property in cash, which he already brought with him. However, Young declined to accept payment, saying that she still needed to secure her sister's advice on the matter.[10] She likewise informed Eleazar that prior approval of petitioner's Board of Directors was required for the transaction, to which remark Eleazar replied that respondent shall instead await such approval.[11]

On February 4, 2005, respondent sent a Letter[12] of even date to petitioner. It was accompanied by Philippine National Bank Check No. 24677 (the subject check), issued for ₱100,000.00 and made payable to petitioner. The letter states thus:

Gentlemen:

As agreed upon, we are making a deposit of ONE HUNDRED THOUSAND PESOS (Php 100,000.00) as earnest money for your property at the corner of Layug St., & Lim-An St., Pasay City as per TCT No. 125318 with an area of 256 sq. m. at 6,000.00/ sq. m. for a total of ONE MILLION FIVE HUNDRED THIRTY SIX THOUSAND PESOS (Php 1,536,000.00).

Full payment upon clearing of the tenants at said property and signing of the Deed of Sale.

(signed)

ANTONIO S. ELEAZAR[13]

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[9] TSN, Carolina Young, July 1, 2008, pp. 20-24.

[10] TSN, Antonio Eleazar, February 5, 2008, pp. 13-14.

[11] TSN, Carolina Young, July 1, 2008, pp. 19-20.

[12] *Rollo*, p. 79.

[13] *Id*.

Despite the delicate nature of the matter and large amount involved, respondent did not deliver the letter and check directly to Young or her office; instead, they were coursed through an ordinary receiving clerk/receptionist of the petitioner, who thus received the same and therefor issued and signed Provisional Receipt No. 33430.[14] The said receipt reads:

> Received from x x x Antonio Eleazar x x x the sum of Pesos One Hundred Thousand x x x
>
> IN PAYMENT OF THE FOLLOWING x x x
>
> Earnest money or Partial payment of
> Pasay Property Layug & Lim-an St. x x x.
>
> Note: This is issued to transactions not yet cleared but subsequently an Official Receipt will be issued. x x x[15]

The check was eventually deposited with and credited to petitioner's bank account.

Thereafter, respondent through counsel demanded in writing that petitioner proceed with the sale of the property.[16] In a March 3, 2006 Letter[17] addressed to respondent's counsel, petitioner wrote back:

> Dear Atty. De Jesus:
>
> Anent your letter dated January 16, 2006 received on February 20, 2006, please be informed of the following:
>
> 1. It was your client SECURITRON SECURITY SERVICES, INC. represented by Mr. Antonio Eleazar who offered to buy our property located at corner Layug and Lim-An St., Pasay City;
> 2. It tendered an earnest money despite the fact that we are still undecided to sell the said property;

[14] *Id*. at 80.

[15] *Id*.

[16] Records, pp. 17-18.

[17] *Rollo*, p. 81.

3. Our Board of Directors failed to pass a resolution to date whether it agrees to sell the property;

4. We have no Contract for the earnest money nor Contract to Sell the said property with your client;

Considering therefore the above as well as due to haste and demands which we feel [are forms] of intimidation and harassment, we regret to inform you that we are now incline (sic) not to accept your offer to buy our property. Please inform your client to coordinate with us for the refund of this (sic) money.

Very truly yours,

(signed)
CAROLINA T. YOUNG
Executive Vice[-]President[18]

Ruling of the Regional Trial Court of Pasay City

On April 18, 2006, respondent filed with the Pasay RTC a civil case against petitioner for specific performance with damages to compel the latter to consummate the supposed sale of the subject property. Docketed as Civil Case No. 06-0492 CFM and assigned to Branch 115 of the Pasay RTC, the Complaint[19] is predicated on the claim that since a perfected contract of sale arose between the parties after negotiations were conducted and respondent paid the ₱100,000.00 supposed earnest money – which petitioner accepted, the latter should be compelled to sell the subject property to the former. Thus, respondent prayed that petitioner be ordered to comply with its obligation as seller, accept the balance of the purchase price, and execute the corresponding deed of sale in respondent's favor; and that petitioner be made to pay ₱200,000.00 damages for its breach and delay in the performance of its obligations, ₱200,000.00 by way of attorney's fees, and costs of suit.

In its Answer with Compulsory Counterclaim,[20] petitioner argued that it never agreed to sell the subject property; that its

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[18] *Id*.

[19] Records, pp. 3-9.

[20] *Id*. at 23-27.

board of directors did not authorize the sale thereof to respondent, as no corresponding board resolution to such effect was issued; that the respondent's ₱100,000.00 check payment cannot be considered as earnest money for the subject property, since said payment was merely coursed through petitioner's receiving clerk, who was forced to accept the same; and that respondent was simply motivated by a desire to acquire the subject property at any cost. Thus, petitioner prayed for the dismissal of the case and, by way of counterclaim, it sought the payment of moral damages in the amount of ₱200,000.00; exemplary damages in the amount of ₱100,000.00; and attorney's fees and costs of suit.

In a Reply,[21] respondent countered that authorization by petitioner's Board of Directors was not necessary since it is a real estate corporation principally engaged in the buying and selling of real property; that respondent did not force nor intimidate petitioner's receiving clerk into accepting the February 4, 2005 letter and check for ₱100,000.00; that petitioner's acceptance of the check and its failure – for more than a year – to return respondent's payment amounts to estoppel and a ratification of the sale; and that petitioner is not entitled to its counterclaim.

After due proceedings were taken, the Pasay RTC issued its Decision dated February 16, 2009, decreeing as follows:

> WHEREFORE, defendant First Optima Realty Corporation is directed to comply with its obligation by accepting the remaining balance of One Million Five Hundred Thirty-Six Thousand Pesos and Ninety-Nine Centavos (₱1,536,000.99), and executing the corresponding deed of sale in favor of the plaintiff Securitron Security Services, Inc. over the subject parcel of land.
>
> No costs.
>
> SO ORDERED.[22]

In ruling for the respondent, the trial court held that petitioner's acceptance of ₱100,000.00 earnest money indicated the existence

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[21] *Id.* at 28-30.

[22] *Rollo*, p. 98.

of a perfected contract of sale between the parties; that there is no showing that when respondent gave the February 4, 2005 letter and check to petitioner's receiving clerk, the latter was harassed or forced to accept the same; and that for the sale of the subject property, no resolution of petitioner's board of directors was required since Young was "free to represent" the corporation in negotiating with respondent for the sale thereof.

Ruling of the Court of Appeals

Petitioner filed an appeal with the CA. Docketed as CA-G.R. CV No. 93715, the appeal made out a case that no earnest money can be considered to have been paid to petitioner as the supposed payment was received by a mere receiving clerk, who was not authorized to accept the same; that the required board of directors resolution authorizing the sale of corporate assets cannot be dispensed with in the case of petitioner; that whatever negotiations were held between the parties only concerned the possible sale, not the sale itself, of the subject property; that without the written authority of petitioner's board of directors, Young cannot enter into a sale of its corporate property; and finally, that there was no meeting of the minds between the parties in the first place.

On September 30, 2011, the CA issued the assailed Decision affirming the trial court's February 16, 2009 Decision, pronouncing thus:

> Article 1318 of the Civil Code declares that no contract exists unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation established.
>
> A careful perusal of the records of the case show[s] that there was indeed a negotiation between the parties as regards the sale of the subject property, their disagreement lies on whether they have arrived on an agreement regarding said sale. Plaintiff-appellee avers that the parties have already agreed on the sale and the price for it and the payment of earnest money and the remaining balance upon clearing of the property of unwanted tenants. Defendant-appellant

on the other hand disputes the same and insists that there was no concrete agreement between the parties.

Upon a careful consideration of the arguments of the parties and the records of the case, we are more inclined to sustain the arguments of the plaintiff-appellee and affirm the findings of the trial court that there was indeed a perfected contract of sale between the parties. The following instances militate against the claim of the defendant-appellant: *First*. The letter of the plaintiff-appellee dated February 4, 2005 reiterating their agreement as to the sale of the realty for the consideration of Php 1,536,000.00 was not disputed nor replied to by the defendant-appellant, the said letter also provides for the payment of the earnest money of Php 100,000.00 and the full payment upon the clearing of the property of unwanted tenants, if the defendant-appellant did not really agree on the sale of the property it could have easily replied to the said letter informing the plaintiff-appellee that it is not selling the property or that the matter will be decided first by the board of directors, defendant-appellant's silence or inaction on said letter shows its conformity or consent thereto; *Second*. In addition to the aforementioned letter, defendant-appellant's acceptance of the earnest money and the issuance of a provisional receipt clearly shows that there was indeed an agreement between the parties and we do not subscribe to the argument of the defendant-appellant that the check was merely forced upon its employee and the contents of the receipt was just dictated by the plaintiff-appellee's employee because common sense dictates that a person would not issue a receipt for a check with a huge amount if she does not know what that is for and similarly would not issue [a] receipt which would bind her employer if she does not have prior instructions to do [so] from her superiors; *Third*. The said check for earnest money was deposited in the bank by defendant-appellant and not until after one year did it offer to return the same. Defendant-appellant cannot claim lack of knowledge of the payment of the check since there was a letter for it, and it is just incredible that a big amount of money was deposited in [its] account [without knowing] about it [or] investigat[ing] what [it was] for. We are more inclined to believe that their inaction for more than one year on the earnest money paid was due to the fact that after the payment of earnest money the place should be cleared of unwanted tenants before the full amount of the purchase price will be paid as agreed upon as shown in the letter sent by the plaintiff-appellee.

As stated above the presence of defendant-appellant's consent and, corollarily, the existence of a perfected contract between the parties are evidenced by the payment and receipt of Php 100,000.00 as earnest money by the contracting parties' x x x. Under the law on sales, specifically Article 1482 of the Civil Code, it provides that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and proof of the perfection of the contract. Although the presumption is not conclusive, as the parties may treat the earnest money differently, there is nothing alleged in the present case that would give rise to a contrary presumption.

We also do not find merit in the contention of the defendant-appellant that there is a need for a board resolution for them to sell the subject property since it is a corporation, a juridical entity which acts only thru the board of directors. While we agree that said rule is correct, we must also point out that said rule is the general rule for all corporations [but] a corporation [whose main business is buying and selling real estate] like herein defendant-appellant, is not required to have a board resolution for the sale of the realty in the ordinary course of business, thus defendant-appellant's claim deserves scant consideration.

Furthermore, the High Court has held that "a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it was conferred."

In the case at bench, it is not disputed and in fact was admitted by the defendant-appellant that Ms. Young, the Executive Vice-President was authorized to negotiate for the possible sale of the subject parcel of land. Therefore, Ms. Young can represent and bind defendant-appellant in the transaction.

Moreover, plaintiff-appellee can assume that Ms. Young, by virtue of her position, was authorized to sell the property of the corporation. Selling of realty is not foreign to [an] executive vice[-]president's function, and the real estate sale was shown to be a normal business activity of defendant-appellant since its primary business is the buy

and sell of real estate. Unmistakably, its Executive Vice-President is cloaked with actual or apparent authority to buy or sell real property, an activity which falls within the scope of her general authority.

Furthermore, assuming arguendo that a board resolution was indeed needed for the sale of the subject property, the defendant-appellant is estopped from raising it now since, [it] did not inform the plaintiff-appellee of the same, and the latter deal (sic) with them in good faith. Also it must be stressed that the plaintiff-appellee negotiated with one of the top officer (sic) of the company thus, any requirement on the said sale must have been known to Ms. Young and she should have informed the plaintiff-appellee of the same.

In view of the foregoing we do not find any reason to deviate from the findings of the trial court, the parties entered into the contract freely, thus they must perform their obligation faithfully. Defendant-appellant's unjustified refusal to perform its part of the agreement constitutes bad faith and the court will not tolerate the same.

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Pasay City Branch 115, in Civil Case No. 06-0492 CFM is hereby AFFIRMED.

SO ORDERED.[23]

Petitioner moved for reconsideration,[24] but in a December 9, 2011 Resolution, the CA held its ground. Hence, the present Petition.

Issues

In an October 9, 2013 Resolution,[25] this Court resolved to give due course to the Petition, which raises the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE MONEY RESPONDENT DELIVERED TO PETITIONER WAS EARNEST MONEY THEREBY PROVIDING A PERFECTED CONTRACT OF SALE.

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[23] *Rollo*, pp. 47-51.

[24] *Id.* at 52-66.

[25] *Id.* at 141-142.

II

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE TIME THAT LAPSED IN RETURNING THE MONEY AND IN REPLYING TO THE LETTER IS PROOF OF ACCEPTANCE OF EARNEST MONEY.

III

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND GRAVE ERROR WHEN IT IGNORED THE RESERVATION IN THE PROVISIONAL RECEIPT – "Note: This is issued to transactions not yet cleared but subsequently an Official Receipt will be issued."[26]

Petitioner's Arguments

In its Petition and Reply[27] seeking to reverse and set aside the assailed CA dispositions and in effect to dismiss Civil Case No. 06-0492 CFM, petitioner argues that respondent failed to prove its case that a contract of sale was perfected between the parties. It particularly notes that, contrary to the CA's ruling, respondent's delivery of the February 4, 2005 letter and check; petitioner's failure to respond to said letter; petitioner's supposed acceptance of the check by depositing the same in its account; and its failure to return the same after more than one year from its tender – these circumstances do not at all prove that a contract of sale was perfected between the parties. It claims that there was never an agreement in the first place between them concerning the sale of the subject property, much less the payment of earnest money therefor; that during trial, Eleazar himself admitted that the check was merely a "deposit";[28] that the February 4, 2005 letter and check were delivered not to Young, but to a mere receiving clerk of petitioner who knew nothing about the

[26] *Id*. at 21-22.

[27] *Id*. at 134-139.

[28] Citing TSN, Antonio Eleazar, November 27, 2007, pp. 14-15, thus:

Q – Was there any formal letter or something that you sent to them, Mr. Witness?

A – Yes, ma'am, I sent a letter, February 4, 2005 and saying that I make a deposit of ₱100,000.00.

supposed transaction and was simply obliged to accept the same without the prerogative to reject them; that the acceptance of respondent's supposed payment was not cleared and was subject to approval and issuance of the corresponding official receipt as noted in Provisional Receipt No. 33430; that respondent intentionally delivered the letter and check in the manner that it did in order to bind petitioner to the supposed sale with or without the latter's consent; that petitioner could not be faulted for receiving the check and for depositing the same as a matter of operational procedure with respect to checks received in the course of its day-to-day business.

Petitioner argues that ultimately, it cannot be said that it gave its consent to any transaction with respondent or to the payment made by the latter. Respondent's letter and check constitute merely an offer which required petitioner's acceptance in order to give rise to a perfected sale; "[o]therwise, a buyer can easily bind any unsuspecting seller to a contract of sale by merely devising a way that prevents the latter from acting on the communicated offer."[29]

Petitioner thus theorizes that since it had no perfected agreement with the respondent, the latter's check should be treated not as earnest money, but as mere guarantee, deposit or option money to prevent the prospective seller from backing out from the sale,[30] since the payment of any consideration acquires the character of earnest money only after a perfected sale between the parties has been arrived at.[31]

Respondent's Arguments

In its Comment,[32] respondent counters that petitioner's case typifies a situation where the seller has had an undue change of

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[29] *Rollo*, pp. 31-32.

[30] Citing *Manila Metal Container Corporation v. Philippine National Bank* 540 Phil. 451, 475 (2006); and *San Miguel Properties Philippines, Inc. v. Huang*, 391 Phil. 636, 643-644 (2000).

[31] Citing *XYST Corporation v. DMC Urban Properties Development, Inc.*, 612 Phil. 116, 123-124 (2009).

[32] *Rollo*, pp. 121-130.

mind and desires to escape the legal consequences attendant to a perfected contract of sale. It reiterates the appellate court's pronouncements that petitioner's failure to reply to respondent's February 4, 2005 letter indicates its consent to the sale; that its acceptance of the check as earnest money and the issuance of the provisional receipt prove that there is a prior agreement between the parties; that the deposit of the check in petitioner's account and failure to timely return the money to respondent militates against petitioner's claim of lack of knowledge and consent. Rather they indicate petitioner's decision to sell subject property as agreed. Respondent adds that contrary to petitioner's claim, negotiations were in fact held between the parties after it sent its December 9, 2004 letter-offer, which negotiations precisely culminated in the preparation and issuance of the February 4, 2005 letter; that petitioner's failure to reply to its February 4, 2005 letter meant that it was amenable to respondent's terms; that the issuance of a provisional receipt does not prevent the perfection of the agreement between the parties, since earnest money was already paid; and that petitioner cannot pretend to be ignorant of respondent's check payment, as it involved a large sum of money that was deposited in the former's bank account.

Our Ruling

The Court grants the Petition. The trial and appellate courts erred materially in deciding the case; they overlooked important facts that should change the complexion and outcome of the case.

It cannot be denied that there were negotiations between the parties conducted after the respondent's December 9, 2004 letter-offer and prior to the February 4, 2005 letter. These negotiations culminated in a meeting between Eleazar and Young whereby the latter declined to enter into an agreement and accept cash payment then being tendered by the former. Instead, Young informed Eleazar during said meeting that she still had to confer with her sister and petitioner's board of directors; in turn, Eleazar told Young that respondent shall await the necessary approval.

Thus, the trial and appellate courts failed to appreciate that respondent's offer to purchase the subject property was never accepted by the petitioner at any instance, even after negotiations were held between them. Thus, as between them, there is no sale to speak of. "When there is merely an offer by one party without acceptance of the other, there is no contract."[33] To borrow a pronouncement in a previously decided case,

> The stages of a contract of sale are: (1) negotiation, starting from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) perfection, which takes place upon the concurrence of the essential elements of the sale; and (3) consummation, which commences when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment of the contract.
>
> In the present case, the parties never got past the negotiation stage. Nothing shows that the parties had agreed on any final arrangement containing the essential elements of a contract of sale, namely, (1) consent or the meeting of the minds of the parties; (2) object or subject matter of the contract; and (3) price or consideration of the sale.[34]

Respondent's subsequent sending of the February 4, 2005 letter and check to petitioner – without awaiting the approval of petitioner's board of directors and Young's decision, or without making a new offer – constitutes a mere reiteration of its original offer which was already rejected previously; thus, petitioner was under no obligation to reply to the February 4, 2005 letter. It would be absurd to require a party to reject the very same offer each and every time it is made; otherwise, a perfected contract of sale could simply arise from the failure to reject the same offer made for the hundredth time. Thus, said letter cannot be considered as evidence of a perfected sale, which does not exist in the first place; no binding obligation on the part of the

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[33] *Manila Metal Container Corporation v. Philippine National Bank*, *supra* note 30 at 471.

[34] *Government Service Insurance System v. Lopez*, 610 Phil. 128, 137-138 (2009).

petitioner to sell its property arose as a consequence. The letter made no new offer replacing the first which was rejected.

Since there is no perfected sale between the parties, respondent had no obligation to make payment through the check; nor did it possess the right to deliver earnest money to petitioner in order to bind the latter to a sale. As contemplated under Art. 1482 of the Civil Code, "there must first be a perfected contract of sale before we can speak of earnest money."[35] "Where the parties merely exchanged offers and counter-offers, no contract is perfected since they did not yet give their consent to such offers. Earnest money applies to a perfected sale."[36]

This Court is inclined to accept petitioner's explanation that since the check was mixed up with all other checks and correspondence sent to and received by the corporation during the course of its daily operations, Young could not have timely discovered respondent's check payment; petitioner's failure to return the purported earnest money cannot mean that it agreed to respondent's offer. Besides, respondent's payment of supposed earnest money was made under dubious circumstances and in disregard of sound business practice and common sense. Indeed, respondent must be faulted for taking such a course of action that is irregular and extraordinary: common sense and logic dictate that if any payment is made under the supposed sale transaction, it should have been made directly to Young or coursed directly through her office, since she is the officer directly responsible for negotiating the sale, as far as respondent is concerned and considering the amount of money involved; no other ranking officer of petitioner can be expected to know of the ongoing talks covering the subject property. Respondent already knew, from Eleazar's previous meeting with Young, that it could only effectively deal with her; more than that, it should know that corporations work only through the proper channels. By acting

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[35] *Umipig v. People*, G.R. Nos. 171359, 171755, 171776, July 18, 2012, 677 SCRA 53, 77.

[36] *Starbright Sales Enterprises, Inc. v. Philippine Realty Corporation*, G.R. No. 177936, January 18, 2012, 663 SCRA 326, 333.

the way it did – coursing the February 4, 2005 letter and check through petitioner's mere receiving clerk or receptionist instead of directly with Young's office, respondent placed itself under grave suspicion of putting into effect a premeditated plan to unduly bind petitioner to its rejected offer, in a manner which it could not achieve through negotiation and employing normal business practices. It impresses the Court that respondent attempted to secure the consent needed for the sale by depositing part of the purchase price and under the false pretense that an agreement was already arrived at, even though there was none. Respondent achieved the desired effect up to this point, but the Court will not be fooled.

Thus, as between respondent's irregular and improper actions and petitioner's failure to timely return the ₱100,000.00 purported earnest money, this Court sides with petitioner. In a manner of speaking, respondent cannot fault petitioner for not making a refund since it is equally to blame for making such payment under false pretenses and irregular circumstances, and with improper motives. Parties must come to court with clean hands, as it were.

In a potential sale transaction, the prior payment of earnest money even before the property owner can agree to sell his property is irregular, and cannot be used to bind the owner to the obligations of a seller under an otherwise perfected contract of sale; to cite a well-worn cliché, the carriage cannot be placed before the horse. The property owner-prospective seller may not be legally obliged to enter into a sale with a prospective buyer through the latter's employment of questionable practices which prevent the owner from freely giving his consent to the transaction; this constitutes a palpable transgression of the prospective seller's rights of ownership over his property, an anomaly which the Court will certainly not condone. An agreement where the prior free consent of one party thereto is withheld or suppressed will be struck down, and the Court shall always endeavor to protect a property owner's rights against devious practices that put his property in danger of being lost or unduly disposed without his prior knowledge or consent. As this *ponente*

has held before, "[t]his Court cannot presume the existence of a sale of land, absent any direct proof of it."[37]

Nor will respondent's supposed payment be treated as a deposit or guarantee; its actions will not be dignified and must be called for what they are: they were done irregularly and with a view to acquiring the subject property against petitioner's consent.

Finally, since there is nothing in legal contemplation which petitioner must perform particularly for the respondent, it should follow that Civil Case No. 06-0492 CFM for specific performance with damages is left with no leg to stand on; it must be dismissed.

With the foregoing view, there is no need to resolve the other specific issues and arguments raised by the petitioner, as they do not materially affect the rights and obligations of the parties – the Court having declared that no agreement exists between them; nor do they have the effect of altering the outcome of the case.

WHEREFORE, the Petition is **GRANTED**. The September 30, 2011 Decision and December 9, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 93715, as well as the February 16, 2009 Decision of the Regional Trial Court of Pasay City, Branch 115 in Civil Case No. 06-0492 CFM are **REVERSED** and **SET ASIDE**. Civil Case No. 06-0492 CFM is ordered **DISMISSED**.

Petitioner First Optima Realty Corporation is ordered to **REFUND** the amount of ₱100,000.00 to respondent Securitron Security Services, Inc. without interest, unless petitioner has done so during the course of the proceedings.

SO ORDERED.

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

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[37] *Robern Development Corporation v. People's Landless Association*, G.R. No. 173622, March 11, 2013, 693 SCRA 24, 26, citing *Amado v. Salvador*, 564 Phil. 728, 740 (2007).

[*] Per Special Order No. 1910 dated January 12, 2015.

SECOND DIVISION

[G.R. No. 200169. January 28, 2015]

RODOLFO S. AGUILAR, *petitioner, vs.* **EDNA G. SIASAT,** *respondent.*

SYLLABUS

CIVIL LAW; PATERNITY AND FILIATION; PROOF OF FILIATION, ESTABLISHED; SSS FORM E-1 SATISFIES THE REQUIREMENT FOR PROOF OF FILIATION AND RELATIONSHIP TO PARENTS; PRESENT IN CASE AT BAR.— This Court, speaking in *De Jesus v. Estate of Dizon*, has held that – The filiation of illegitimate children, like legitimate children, is established by (1) the record of birth appearing in the civil register or a final judgment; or **(2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned**. In the absence thereof, filiation shall be proved by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws. **The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval**. x x x Thus, applying the foregoing pronouncement to the instant case, it must be concluded that petitioner – who was born on March 5, 1945, or during the marriage of Alfredo Aguilar and Candelaria Siasat-Aguilar and before their respective deaths – has sufficiently proved that he is the legitimate issue of the Aguilar spouses. As petitioner correctly argues, Alfredo Aguilar's SSS Form E-1 (Exhibit "G")

satisfies the requirement for proof of filiation and relationship to the Aguilar spouses under Article 172 of the Family Code; by itself, said document constitutes an "admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned."

APPEARANCES OF COUNSEL

Solomon A. Lobrido Jr. for petitioner.
Rosslyn Morana for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the August 30, 2006 Decision[2] and December 20, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 64229 affirming the August 17, 1999 Decision[4] of the Regional Trial Court (RTC) of Bacolod City, Branch 49 in Civil Case No. 96-9591 and denying petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Spouses Alfredo Aguilar and Candelaria Siasat-Aguilar (the Aguilar spouses) died, intestate and without debts, on August 26, 1983 and February 8, 1994, respectively. Included in their estate are two parcels of land (herein subject properties) covered by Transfer Certificates of Title Nos. T-25896 and T-(15462)

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[1] *Rollo*, pp. 3-17.

[2] *Id*. at 21-36; penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Isaias P. Dicdican and Romeo F. Barza.

[3] *Id*. at 51-52; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

[4] CA *rollo*, pp. 41-47; penned by Judge Othello M. Villanueva.

[5] *Rollo*, pp. 37-44.

1070 of the Registries of Deeds of Bago and Bacolod (the subject titles).[6]

In June 1996, petitioner Rodolfo S. Aguilar filed with the RTC of Bacolod City (Bacolod RTC) a civil case for mandatory injunction with damages against respondent Edna G. Siasat. Docketed as Civil Case No. 96-9591 and assigned to Branch 49 of the Bacolod RTC, the Complaint[7] alleged that petitioner is the only son and sole surviving heir of the Aguilar spouses; that he (petitioner) discovered that the subject titles were missing, and thus he suspected that someone from the Siasat clan could have stolen the same; that he executed affidavits of loss of the subject titles and filed the same with the Registries of Deeds of Bacolod and Bago; that on June 22, 1996, he filed before the Bacolod RTC a Petition for the issuance of second owner's copy of Certificate of Title No. T-25896, which respondent opposed; and that during the hearing of the said Petition, respondent presented the two missing owner's duplicate copies of the subject titles. Petitioner thus prayed for mandatory injunctive relief, in that respondent be ordered to surrender to him the owner's duplicate copies of the subject titles in her possession; and that damages, attorney's fees, and costs of suit be awarded to him.

In her Answer,[8] respondent claimed that petitioner is not the son and sole surviving heir of the Aguilar spouses, but a mere stranger who was raised by the Aguilar spouses out of generosity and kindness of heart; that petitioner is not a natural or adopted child of the Aguilar spouses; that since Alfredo Aguilar predeceased his wife, Candelaria Siasat-Aguilar, the latter inherited the conjugal share of the former; that upon the death of Candelaria Siasat-Aguilar, her brothers and sisters inherited her estate as she had no issue; and that the subject titles were not stolen, but entrusted to her for safekeeping by Candelaria Siasat-Aguilar,

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[6] *Id*. at 6, 22; CA *rollo*, p. 41.

[7] Records, pp. 1-6.

[8] *Id*. at 22-29.

who is her aunt. By way of counterclaim, respondent prayed for an award of moral and exemplary damages, and attorney's fees.

During trial, petitioner testified and affirmed his relationship to the Aguilar spouses as their son. To prove filiation, he presented the following documents, among others:

1. His school records at the Don J.A. Araneta Elementary School, Purok No. 2, Bacolod-Murcia Milling Company (BMMC), Bacolod City (Exhibit "C" and submarkings), wherein it is stated that Alfredo Aguilar is petitioner's parent;
2. His Individual Income Tax Return (Exhibit "F"), which indicated that Candelaria Siasat-Aguilar is his mother;
3. Alfredo Aguilar's Social Security System (SSS) Form E-1 dated October 10, 1957 (Exhibit "G"), a public instrument subscribed and made under oath by Alfredo Aguilar during his employment with BMMC, which bears his signature and thumb marks and indicates that petitioner, who was born on March 5, 1945, is his son and dependent;
4. Alfredo Aguilar's Information Sheet of Employment with BMMC dated October 29, 1954 (Exhibit "L"), indicating that petitioner is his son;
5. Petitioner's Certificate of Marriage to Luz Abendan (Exhibit "M"), where it is declared that the Aguilar spouses are his parents; and
6. Letter of the BMMC Secretary (Exhibit "O") addressed to a BMMC supervisor introducing petitioner as Alfredo Aguilar's son and recommending him for employment.
7. Certification dated January 27, 1996 issued by the Bacolod City Civil Registry to the effect that the record of births during the period 1945 to 1946 were "all destroyed by nature," hence no true copies of the Certificate of Live Birth of petitioner could be issued as requested (Exhibit "Q").[9]

Petitioner also offered the testimonies of his wife, Luz Marie Abendan-Aguilar (Abendan-Aguilar), and Ester Aguilar-Pailano

[9] *Id*. at 203; *rollo*, pp. 29-30; CA *rollo*, pp. 43-44.

(Aguilar-Pailano), his aunt and sister of Alfredo Aguilar. Abendan-Aguilar confirmed petitioner's identity, and she testified that petitioner is the son of the Aguilar spouses and that during her marriage to petitioner, she lived with the latter in the Aguilar spouses' conjugal home built on one of the subject properties. On the other hand, 81-year old Aguilar-Pailano testified that she is the sister of Alfredo Aguilar; that the Aguilar spouses have only one son – herein petitioner – who was born at BMMC; that after the death of the Aguilar spouses, she and her siblings did not claim ownership of the subject properties because they recognized petitioner as the Aguilar spouses' sole child and heir; that petitioner was charged with murder, convicted, imprisoned, and later on paroled; and that after he was discharged on parole, petitioner continued to live with his mother Candelaria Siasat-Aguilar in one of the subject properties, and continues to live there with his family.[10]

For her evidence, respondent testified among others that she is a retired teacher; that she does not know petitioner very well, but only heard his name from her aunt Candelaria Siasat-Aguilar; that she is not related by consanguinity or affinity to petitioner; that she attended to Candelaria Siasat-Aguilar while the latter was under medication in a hospital until her death; that Candelaria Siasat-Aguilar's hospital and funeral expenses were paid for by Nancy Vingno; that Candelaria Siasat-Aguilar executed an affidavit to the effect that she had no issue and that she is the sole heir to her husband Alfredo Aguilar's estate; that she did not steal the subject titles, but that the same were entrusted to her by Candelaria Siasat-Aguilar; that a prior planned sale of the subject properties did not push through because when petitioner's opinion thereto was solicited, he expressed disagreement as to the agreed price.[11]

Respondent likewise offered the testimony of Aurea Siasat-Nicavera (Siasat-Nicavera), 74 years old, who stated that the Aguilar spouses were married on June 22, 1933 in Miag-ao,

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[10] *Rollo*, pp. 24-25; CA *rollo*, pp. 44-45.

[11] *Id*. at 26-27; *id*. at 45-46.

Iloilo; that she is the sister of Candelaria Siasat-Aguilar; that she does not know petitioner, although she admitted that she knew a certain "Rodolfo" whose nickname was "Mait"; that petitioner is not the son of the Aguilar spouses; and that Alfredo Aguilar has a sister named Ester Aguilar-Pailano.[12]

Respondent also offered an Affidavit previously executed by Candelaria Siasat-Aguilar (Exhibit "2") announcing among others that she and Alfredo have no issue, and that she is the sole heir to Alfredo's estate.

Ruling of the Regional Trial Court

On August 17, 1999, the Bacolod RTC issued its Decision, decreeing as follows:

> From the evidence thus adduced before this Court, no solid evidence attesting to the fact that plaintiff herein is either a biological son or a legally adopted one was ever presented. Neither was a certificate of live birth of plaintiff ever introduced confirming his biological relationship as a son to the deceased spouses Alfredo and Candelaria S. Aguilar. As a matter of fact, in the affidavit of Candelaria S. Aguilar (Exhibit 2) she expressly announced under oath that Alfredo and she have no issue and that she is the sole heir to the estate of Alfredo is (sic) concrete proof that plaintiff herein was never a son by consanguinity nor a legally adopted one of the deceased spouses Alfredo and Candelaria Aguilar.
>
> This being the case, Petitioner is not deemed vested with sufficient interest in this action to be considered qualified or entitled to the issuance of the writ of mandatory injunction and damages prayed for.
>
> WHEREFORE, judgment is hereby rendered dismissing plaintiff's complaint with cost.
>
> The counterclaim of the defendant is likewise dismissed for lack of legal basis.
>
> SO ORDERED.[13]

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[12] *Id*. at 27; *id*. at 45.

[13] CA *rollo*, pp. 46-47.

Ruling of the Court of Appeals

Petitioner filed an appeal with the CA.[14] Docketed as CA-G.R. CEB-CV No. 64229, the appeal essentially argued that petitioner is indeed the Aguilar spouses' son; that under Article 172 of the Family Code,[15] an admission of legitimate filiation in a public document or a private handwritten instrument signed by the parent concerned constitutes proof of filiation; that through the documentary evidence presented, petitioner has shown that he is the legitimate biological son of the Aguilar spouses and the sole heir to their estate. He argued that he cannot present his Certificate of Live Birth as all the records covering the period 1945-1946[16] of the Local Civil Registry of Bacolod City were destroyed as shown by Exhibits "Q" to "Q-3"; for this reason, he presented the foregoing documentary evidence to prove his relationship to the Aguilar spouses. Petitioner made particular reference to, among others, Alfredo Aguilar's SSS Form E-1 (Exhibit "G"), arguing that the same was made under oath and thus sufficient under Article 172 of the Family Code to establish that he is a child and heir of the Aguilar spouses. Finally, petitioner questioned the trial court's reliance upon Candelaria Siasat-Aguilar's affidavit (Exhibit "2") attesting that she and Alfredo have no children and that she is the sole heir to the estate of Alfredo, when such piece of evidence has been discarded by

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[14] *Id*. at 23-40.

[15] Art. 172. The filiation of legitimate children is establish by any the following:

(1) The records of birth appearing in the civil register or a final judgement; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws. (265a, 266a, 267a)

[16] Petitioner was born on March 5, 1945.

the trial court in a previous Order dated April 1, 1998, stating thus:

> Except for defendant's Exhibit "2", all other Exhibits, Exhibits "1", "3", "4" and "5", together with their submarkings, are all admitted in evidence.[17]

On August 30, 2006, the CA issued the assailed Decision affirming the trial court's August 17, 1999 Decision, pronouncing thus:

> The exhibits relied upon by plaintiff-appellant to establish his filiation with the deceased spouses Aguilar deserve scant consideration by this Court. The Elementary School Permanent Record of plaintiff-appellant cannot be considered as proof of filiation. As enunciated by the Supreme Court in the case of *Reyes vs. Court of Appeals*, 135 SCRA 439:
>
> > "Student record or other writing not signed by alleged father do not constitute evidence of filiation."
>
> As regards the Income Tax Return of plaintiff-appellant filed with the Bureau of Internal Revenue, WE hold that it cannot be considered as evidence of filiation. As stated by the Supreme Court in the case of *Labagala vs. Santiago*, 371 SCRA 360:
>
> > "A baptismal certificate, a private document is not conclusive proof of filiation. More so are the entries made in an income tax return, which only shows that income tax has been paid and the amount thereof."
>
> With respect to the Certificate of Marriage x x x wherein it is shown that the parents of the former are Alfredo and Candelaria Siasat Aguilar does not prove filiation. The Highest Tribunal declared that a marriage contract not signed by the alleged father of bride is not competent evidence of filiation nor is a marriage contract recognition in a public instrument.
>
> The rest of the exhibits offered x x x, except the Social Security Form E-1 (Exhibit "G") and the Information Sheet of Employment of Alfredo Aguilar (Exhibit "L"), allegedly tend to establish that

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[17] CA *rollo*, p. 38.

plaintiff-appellant has been and is presently known as Rodolfo Siasat Aguilar and he has been bearing the surname of his alleged parents.

WE cannot sustain plaintiff-appellant's argument. Use of a family surname certainly does not establish pedigree.

Insofar as the SSS Form E-1 and Information Sheet of Employment of Alfredo Aguilar are concerned, WE cannot accept them as sufficient proof to establish and prove the filiation of plaintiff-appellant to the deceased Aguilar spouses. While the former is a public instrument and the latter bears the signature of Alfredo Aguilar, they do not constitute clear and convincing evidence to show filiation based on open and continuous possession of the status of a legitimate child. Filiation is a serious matter that must be resolved according to the requirements of the law.

All told, plaintiff-appellant's evidence failed to hurdle the "high standard of proof" required for the success of an action to establish one's legitimate filiation when relying upon the provisions regarding open and continuous possession or any other means allowed by the Rules of Court and special laws.

Having resolved that plaintiff-appellant is not an heir of the deceased spouses Aguilar, thereby negating his right to demand the delivery of the subject TCTs in his favor, this Court cannot grant the writ of mandatory injunction being prayed for.

x x x x x x x x x

In the present case, plaintiff-appellant failed to show that he has a clear and unmistakable right that has been violated. Neither had he shown permanent and urgent necessity for the issuance of the writ.

With respect to the damages prayed for, WE sustain the trial court in denying the same. Aside from the fact that plaintiff-appellant failed to show his clear right over the subject parcels of land so that he has not sustained any damage by reason of the withholding of the TCTs from him, there is no clear testimony on the anguish or anxiety he allegedly suffered as a result thereof. Well entrenched in law and jurisprudence is the principle that the grant of moral damages is expressly allowed by law in instances where proofs of the mental anguish, serious anxiety and moral shock were shown.

ACCORDINGLY, in line with the foregoing disquisition, the appeal is hereby DENIED. The impugned Decision of the trial court is AFFIRMED IN TOTO.

SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration,[19] but in a December 20, 2011 Resolution, the CA held its ground. Hence, the present Petition.

Issues

In an August 28, 2013 Resolution,[20] this Court resolved to give due course to the Petition, which raises the following issues:

In issuing the assailed DECISION affirming in toto the Decision of RTC Branch 49, Bacolod City, and the Resolution denying petitioner's Motion for Reconsideration, the Honorable Court of Appeals committed reversible error [in] not taking into consideration petitioner's Exhibit "G" (SSS E-1 acknowledged and notarized before a notary public, executed by Alfredo Aguilar, recognizing the petitioner as his son) as public document that satisfies the requirement of Article 172 of the [Family] Code in the establishment of the legitimate filiation of the petitioner with his father, Alfredo Aguilar.

The herein [P]etition raises the issue of pure question of law with respect to the application of Article 172 of the Family Code particularly [paragraph] 3 thereof in conjunction with Section 19 and Section 23, Rule 132 of the Rules of Court relating to public document which is substantial enough to merit consideration of this Honorable Court as it will enrich jurisprudence and forestall future litigation.[21]

Petitioner's Arguments

In his Petition and Reply[22] seeking to reverse and set aside the assailed CA dispositions and praying that judgment be rendered

[18] *Rollo*, pp. 31-35.

[19] *Id*. at 37-43.

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

[21] *Id*. at 5-6.

[22] *Id*. at 67-69.

ordering respondent to surrender the owner's duplicates of Transfer Certificates of Title Nos. T-25896 and T-(15462) 1070, petitioner argues that Alfredo Aguilar's SSS Form E-1 (Exhibit "G") satisfies the requirement for proof of filiation and relationship to the Aguilar spouses under Article 172 of the Family Code. Petitioner contends that said SSS Form E-1 is a declaration under oath by his father, Alfredo Aguilar, of his status as the latter's son; this recognition should be accorded more weight than the presumption of legitimacy, since Article 172 itself declares that said evidence establishes legitimate filiation without need of court action. He adds that in contemplation of law, recognition in a public instrument such as the SSS Form E-1 is the "highest form of recognition which partake (sic) of the nature of a complete act of recognition bestowed upon" him as the son of the late Alfredo Aguilar; that respondent has no personality to impugn his legitimacy and cannot collaterally attack his legitimacy; that the action to impugn his legitimacy has already prescribed pursuant to Articles 170 and 171 of the Family Code;[23] and that having proved his filiation, mandatory injunction should issue, and an award of damages is in order.

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[23] Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1) If the husband should die before the expiration of the period fixed for bringing his action;

(2) If he should die after the filing of the complaint without having desisted therefrom; or

(3) If the child was born after the death of the husband. (262a)

Respondent's Arguments

In her Comment[24] and Memorandum,[25] respondent simply echoes the pronouncements of the CA, adding that the Petition is a mere rehash of the CA appeal which has been passed upon succinctly by the appellate court.

Our Ruling

The Court grants the Petition.

This Court, speaking in *De Jesus v. Estate of Dizon*,[26] has held that –

The filiation of illegitimate children, like legitimate children, is established by (1) the record of birth appearing in the civil register or a final judgment; or **(2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned**. In the absence thereof, filiation shall be proved by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws. **The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval**. Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child's acknowledgment.

A scrutiny of the records would show that petitioners were **born during the marriage of their parents**. The certificates of live birth would also identify Danilo de Jesus as being their father.

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[24] *Rollo*, pp. 56-59.

[25] *Id*. at 84-91.

[26] 418 Phil. 768 (2001).

> **There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate**. This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse. Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.[27] (Emphasis supplied)

Thus, applying the foregoing pronouncement to the instant case, it must be concluded that petitioner – who was born on March 5, 1945, or during the marriage of Alfredo Aguilar and Candelaria Siasat-Aguilar[28] and before their respective deaths[29] – has sufficiently proved that he is the legitimate issue of the Aguilar spouses. As petitioner correctly argues, Alfredo Aguilar's SSS Form E-1 (Exhibit "G") satisfies the requirement for proof of filiation and relationship to the Aguilar spouses under Article 172 of the Family Code; by itself, said document constitutes an "admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned."

Petitioner has shown that he cannot produce his Certificate of Live Birth since all the records covering the period 1945-1946 of the Local Civil Registry of Bacolod City were destroyed, which necessitated the introduction of other documentary evidence – particularly Alfredo Aguilar's SSS Form E-1 (Exhibit "G") –

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[27] *Id*. at 772-775.

[28] The Aguilar spouses were married on June 22, 1933.

[29] Alfredo Aguilar passed away on August 26, 1983; Candelaria Siasat-Aguilar died on February 8, 1994.

to prove filiation. It was erroneous for the CA to treat said document as mere proof of open and continuous possession of the status of a legitimate child under the second paragraph of Article 172 of the Family Code; it is evidence of filiation under the first paragraph thereof, the same being an express recognition in a public instrument.

To repeat what was stated in *De Jesus*, filiation may be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, and such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. And, relative to said form of acknowledgment, the Court has further held that:

> In view of the pronouncements herein made, the Court sees it fit to adopt the following rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument wherein an admission of filiation of a legitimate or illegitimate child is made:
>
> **1) Where the private handwritten instrument is the lone piece of evidence submitted to prove filiation, there should be strict compliance with the requirement that the same must be signed by the acknowledging parent; and**
>
> 2) Where the private handwritten instrument is accompanied by other relevant and competent evidence, it suffices that the claim of filiation therein be shown to have been made and handwritten by the acknowledging parent as it is merely corroborative of such other evidence.

Our laws instruct that the welfare of the child shall be the "paramount consideration" in resolving questions affecting him. Article 3(1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic:

> Article 3
>
> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is thus "(t)he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children x x x." Too, "(t)he State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development."[30] (Emphasis supplied)

This case should not have been so difficult for petitioner if only he obtained a copy of his Certificate of Live Birth from the National Statistics Office (NSO), since the Bacolod City Civil Registry copy thereof was destroyed. He would not have had to go through the trouble of presenting other documentary evidence; the NSO copy would have sufficed. This fact is not lost on petitioner; the Certification dated January 27, 1996 issued by the Bacolod City Civil Registry (Exhibit "Q") contained just such an advice for petitioner to proceed to the Office of the Civil Registrar General at the NSO in Manila to secure a copy of his Certificate of Live Birth, since for every registered birth in the country, a copy of the Certificate of Live Birth is submitted to said office.

As to petitioner's argument that respondent has no personality to impugn his legitimacy and cannot collaterally attack his legitimacy, and that the action to impugn his legitimacy has already prescribed pursuant to Articles 170 and 171 of the Family Code, the Court has held before that –

Article 263[31] refers to an action to impugn the legitimacy of a child, to assert and prove that a person is not a man's child by his wife. However, the present case is not one impugning petitioner's legitimacy. Respondents are asserting not merely that petitioner is not a legitimate child of Jose, but that she is not a child of Jose at all.[32]

Finally, if petitioner has shown that he is the legitimate issue of the Aguilar spouses, then he is as well heir to the latter's

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[30] *Dela Cruz v. Gracia*, 612 Phil. 167, 179-180 (2009).

[31] Of the CIVIL CODE, now Art. 170 of the FAMILY CODE.

[32] *Labagala v. Santiago*, 422 Phil. 699, 708 (2001).

estate. Respondent is then left with no right to inherit from her aunt Candelaria Siasat-Aguilar's estate, since succession pertains, in the first place, to the descending direct line.[33]

WHEREFORE, the Petition is **GRANTED**. The August 30, 2006 Decision and December 20, 2011 Resolution of the Court of Appeals in CA-G.R. CEB-CV No. 64229, as well as the August 17, 1999 Decision of the Regional Trial Court of Bacolod City, Branch 49 in Civil Case No. 96-9591 are **REVERSED** and **SET ASIDE**. Respondent Edna G. Siasat is hereby ordered to **SURRENDER** to the petitioner Rodolfo S. Aguilar the owner's duplicates of Transfer Certificates of Title Nos. T-25896 and T-(15462) 1070.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 203026. January 28, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **NATHANIEL PASION *y* DELA CRUZ *a.k.a.* "ATHAN" and DENNIS MICHAEL PAZ *y* SIBAYAN,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THE PRESUMPTION OF

[33] CIVIL CODE, Article 978.

[*] Per Special Order No. 1910 dated January 12, 2015.

REGULARITY IN THE PERFORMANCE OF DUTY MUST PREVAIL OVER APPELLANT'S UNSUBSTANTIATED ALLEGATIONS; ESTABLISHED IN CASE AT BAR.— As the lower courts have, we likewise adhere to the well-entrenched rule that full faith and credence are given to the narration of police officers who testify for the prosecution on the entrapment or buy-bust operation, because as police officers, they are presumed to have regularly performed their duties. Indeed, the presumption of regularity must prevail over appellants' unsubstantiated allegations. This presumption is overturned only if there is clear and convincing evidence that the officers were not properly performing their duty or that they were inspired by improper motive. In this case, there was none. x x x The prosecution established beyond reasonable doubt, through the testimony of credible police officers, that on separate instances during the same day, after they were placed under surveillance, followed by a buy-bust operation, Pasion, engaged in the illegal sale of *shabu*, a dangerous drug, and Paz, delivered *shabu* and possessed *marijuana*, both dangerous drugs.

2. **CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL DELIVERY OF DANGEROUS DRUGS; ELEMENTS.—** In a prosecution for the illegal sale and illegal delivery of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.

3. **ID.; ID.; POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [T]he elements of the crime of possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

4. **ID.; ID.; IMPOSABLE PENALTIES.—** Turning now to the imposable penalty on accused-appellants Pasion and Paz, we sustain the respective penalties imposed on them by the RTC, and affirmed by the CA. Sections 5 and 11, Article II of R.A. No. 9165 provide for the penalty for the illegal sale, illegal delivery and illegal possession, respectively, of dangerous drugs: x x x 1. Nathaniel Pasion who was found guilty of illegal sale

of *shabu* was correctly sentenced to life imprisonment and fined ₱2,000,000.00; 2. Paz who was found guilty of illegal delivery of *shabu* was likewise correctly sentenced to life imprisonment and fined ₱2,000,000.00 and for the crime of illegal possession of *marijuana* was correctly sentenced to imprisonment of twelve (12) years and one (1) day to fourteen (14) years and fined Three Hundred Thousand Pesos (₱300,000.00).

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ferdinand Menor Agustin for accused-appellants.

R E S O L U T I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) promulgated on 30 January 2012 affirming the Decision[2] of the Regional Trial Court (RTC) Branch 13, Laoag City sustaining the verdict of conviction of accused-appellants Nathaniel Pasion y dela Cruz (Pasion) and Dennis Michael Paz y Sibayan (Paz) for violation of Sections 5 and 11 of Republic Act No. 9165 (R.A. No. 9165) or the "Comprehensive Dangerous Drugs Act of 2002."

The Information against Pasion is docketed as Criminal Case No. 14074, to wit:

The undersigned Assistant Provincial Prosecutor of Ilocos Norte accuses NATHANIEL PASION Y DELA CRUZ a.k.a. "ATHAN" a resident of Brgy. 3, San Nicolas, Ilocos Norte, for VIOLATION of SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 (Illegal Sale of Dangerous Drugs), committed as follows:

That on or about 10:40 in the evening of June 10, 2009, in the municipality of San Nicolas, province of Ilocos Norte,

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[1] *Rollo*, pp. 2-32; Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio concurring.

[2] CA *rollo*, pp. 14-52; Penned by RTC Presiding Judge Philip G. Salvador.

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) small heat-sealed plastic sachet containing methampethamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing 0.0987 gram worth One Thousand Pesos (₱1,000.00) to an agent poseur-buyer in the person of IO1 MERTON FESWAY of the PDEA-INSET, Laoag City, without the necessary authority or license from the appropriate government agency or authority to do so.

CONTRARY TO LAW.[3]

The Informations against Paz for delivering and possessing "*shabu*" and "*marijuana*" read:

Criminal Case No. 14075
(Violation of Section 5 [Delivery], Article II of R.A 9165)

The undersigned Assistant Prosecutor of Ilocos Norte, accuses DENNIS MICHAEL PAZ y SIBAYAN, a resident of Brgy. 13, Laoag City, for VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 (Illegal Delivery of Dangerous Drugs) committed as follows:

That on or about 11:10 in the evening of June 10, 2009, in the municipality of San Nicolas, province of Ilocos Norte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously deliver and give away to NATHANIEL PASION y DELA CRUZ a.k.a. "ATHAN" one (1) small heated-sealed plastic sachet containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing 0.0741 gram, without the necessary authority or license from the appropriate government agency in violation of the aforesaid law.

CONTRARY TO LAW.

Criminal Case No. 14076
(Violation of Section 11 [Possession], Article II of RA 9165)

The undersigned Assistant Provincial Prosecutor of Ilocos Norte, accuses DENNIS MICHAEL PAZ y SIBAYAN, a resident of Brgy. 13,

[3] *Rollo*, p. 3.

Laoag City, of the crime for VIOLATION OF SECTION 11, ARTICLE II OF R.A. 9165 (Illegal Possession of Dangerous Drugs), committed as follows:

> That on or about 11:10 o'clock in the evening of June 10, 2009, in the Municipality of San Nicolas, Province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, did then and there willfully, unlawfully and knowingly have in his possession, control and custody one (1) small heat sealed plastic sachet containing dried marijuana leaves, weighing 2.9921g, without having the authority or license to possess the same from the appropriate government agency or authority, in violation of the afore-cited law.
>
> CONTRARY TO LAW.[4]

The foregoing charges were consolidated and tried jointly having arisen from related anti-narcotics operations conducted on the same day of 10 June 2009 by the Ilocos Norte Special Enforcement Team (INSET) of the PDEA, Regional Office I.

Immediately, during arraignment, Pasion pleaded not guilty; Paz, on the other hand, refused to enter a plea arguing that his arrest was illegal. Pursuant to the Rules[5] the trial court ordered the entry of a plea of "not guilty" on Paz's behalf.

Thereafter, trial ensued where the following facts were presented by the prosecution:

Around 4:00 o'clock in the afternoon of June 10, 2009, a confidential informant came to the INSET office of the PNP Police Station in Laoag City to inform Intelligence Officer 1 (IO1) Merton P. Fesway about the illegal activities of a certain Nathaniel Pasion at Barangay 1, San Nicolas, Ilocos Norte. Upon receiving said information, PO1 Armando Bautista, INSET's team leader, made a phone call to IO2 Charlton Carame of the Intelligence and Investigation Section of the PDEA, Regional Office, to verify if the suspect is included in the Order of Battle or watch list of drug

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[4] *Id.* at 3-4.

[5] See Section 1, paragraph (c), Rule 116 of the Rules of Court.

personalities. As said inquiry yielded positive result, PO1 Bautista instructed IO1 Efren Esmin and IO1 Fesway to further validate and investigate on the intelligence report. In the presence of the confidential informant, PO1 Bautista conducted a briefing for their projected surveillance operation.

Around 4:30 p.m. of the same day, IO1 Fesway, IO1 Esmin and the informant arrived at their drop site in Big Mak, Brgy. 1, San Nicolas, Ilocos Norte. From across the highway, which was about twenty-five (25) meters away from where they stood, the confidential informant saw appellant Pasion standing near the waiting shed. The informant immediately confirmed to IO1 Esmin and IO1 Fesway the identity and exact location of appellant Pasion and left afterwards.

IO1 Fesway and IO1 Esmin strategically positioned themselves about ten (10) meters away from appellant Pasion and pretended to be waiting for a passenger jeepney. For about twenty (20) minutes, they closely monitored the actions of appellant Pasion. x x x. It was also observed that in each transaction, appellant Pasion and the other person would engage in a brief conversation and afterwards, the other person would hand a monetary bill which appears to be five hundred pesos (Php500.00) in exchange for suspected shabu.

Around 5:30 o'clock in the afternoon of even date, IO1 Fesway and IO1 Esmin went back to INSET's office to report to PO1 Bautista the result of their investigation surveillance operation. PO1 Bautista immediately made a phone call to Regional Director Robert Ofenia of PDEA Region 1 to secure a permit to conduct anti-narcotic operation. PO1 Bautista sought the assistance of the team leader of the PDEA's Special Operations Group in Vigan, Ilocos Sur.

A team was constituted, composed of IO1 Fesway, IO1 Esmin, IO1 Dumatog Leander, IO2 Ricky Ramos and SPO2 Annabelle Cabarles. PO1 Bautista designated IO1 Fesway as the poseur-buyer, while IO1 Esmin was tasked as the latter's immediate back-up. The other members of the team were assigned as the perimeter defense. The PDEA agents agreed that the pre-arranged signal to indicate that the sale has been consummated would be for IO1 Fesway to place his white handkerchief on his shoulder. IO1 Fesway marked two pieces of fake ₱500.00 bill with the initials "MF1" and "MF2", respectively, for identification purposes.

Soon thereafter, PO1 Bautista and his team proceeded to their safe house in San Nicolas, Ilocos Norte and around 9:00 o'clock in

the evening of June 10, 2009, the members of Vigan's Special Operations Group composed of PO3 Abang Allan, IO2 Jojo Gayuma, IO2 Apiit Aaron, IO2 Delia Inay and IO2 Daniel Discaya arrived. PO1 Bautista conducted another briefing to discuss the strategies to be undertaken in the buy-bust operation. IO1 Leander Dumatog, IO2 Ricky Ramos and SO2 [sic] Annabelle Cabarles, together with the members of the Special Operations Group of Vigan were designated as part of the back-up force.

Around 10:00 p.m. of June 10, 2009, the informant, through a text message, reported to IO1 Fesway that he spotted appellant Pasion at the house of the latter's sister in Brgy. 3, San Nicolas, Ilocos Norte. At once, the police operatives proceeded to the target area and parked their service vehicle at the corner of Bumanglang Street and Cleveland Street to meet the confidential informant.

On their way to the house of appellant Pasion's sister, IO1 Fesway and the confidential informant chanced upon appellant Pasion who was then standing near a lamp post located at the entrance of a pathway leading to his sister's house. The confidential informant approached appellant Pasion and introduced IO1 Fesway as an interested buyer. Shortly thereafter, IO1 Fesway handed the marked ₱500.00 bills to appellant Pasion, in exchange, appellant Pasion gave one plastic sachet containing white crystalline substance. Subsequently, IO1 Fesway placed his white handkerchief on his shoulder, the pre-arranged signal to alert the police team that the transaction was consummated.

Sensing the speeding vehicle of the PDEA agents, appellant Pasion ran towards his sister's house. IO1 Fesway chased him and IO1 Esmin immediately followed until they caught him at the gate of his sister's house.

Right there, IO1 Fesway apprised appellant Pasion of his constitutional rights and informed him that they were apprehending him for the crime of selling *shabu*. IO1 Esmin frisked him and recovered from his right front pocket the marked money. IO1 Fesway took custody of the items confiscated from appellant Pasion until it was turned over to the police station. In the meantime, other members of the back-up team were deployed to prevent people from coming in to cause any commotion.

On board the PDEA service vehicle, appellant Pasion offered to divulge his supplier in his attempt to enter into an agreement with the arresting team. PO1 Bautista allowed him to call his supplier

and order *shabu* worth One Thousand Pesos (Php1,000.00). Appellant Pasion told his supplier to meet him in front of Red Ribbon at 365 Plaza, Barangay 1, San Nicolas for the delivery of the *shabu* to which his supplier agreed. Inside the service vehicle, PO1 Bautista conducted another briefing and tasked IO1 Esmin to accompany appellant Pasion with IO1 Fesway as his immediate back-up.

Upon arrival at the agreed place, the PDEA team waited for the supplier who was later identified as appellant Paz. After twenty (20) minutes, appellant [Paz] arrived in his black Honda Wave Motorcycle. Right there and then, IO1 Esmin and appellant Pasion approached him and asked for the item that he ordered. While appellant Paz was in the process of handling over the suspected shabu to appellant Pasion, IO1 Esmin declared that he is a PDEA agent and immediately took hold of him. The back-up team rushed towards appellant [Paz] and, at this instance, IO1 Esmin confiscated the *shabu* in his hand and frisked him. As a result, another plastic sachet containing marijuana, an Ipod, a wallet and a cellphone were recovered from him. Subsequently, appellant Paz was apprised of his rights and together with appellant Pasion, they were brought to the PNP San Nicolas Municipal Station. IO1 Esmin kept the items seized from appellant Paz until they were finally brought to the police station.

At the police station, appellants were booked and IO1 Fesway and IO1 Esmin marked and inventoried the items confiscated from appellants. In the process, photographs were taken in the presence of appellants as well as Venerando Ute of Bombo Radyo and Barangay Kagawad Albert de Guzman who stood as witness. Certificates of inventory were executed in the presence of appellants and the witnesses. Separate letters requesting for laboratory examination of the seized items were prepared by IO1 Annabelle Cabarles. At 11:30 p.m. of June 11, 2009, IO1 Fesway and IO1 Esmin personally brought the letter requests, the plastic sachets of *shabu* and *marijuana* including appellants to the Provincial Crime Laboratory Office at Camp Juan.

SPO2 Diosdado C. Mamotos received the subject items which were placed in two (2) separate plastic sachets and marked them with his initials "DCM." Immediately thereafter, SPO1 Mamotos turned over the object evidence to Police Senior Inspector Anamelisa S. Bacani, the Forensic Chemist of the said crime laboratory for laboratory examination. After conducting tests on the submitted

specimen, PSI Bacani found them to be positive for methamphetamine hydrochloride, a dangerous drug."[6] (Citations omitted)

For their defense, both accused-appellants Pasion and Paz denied liability and maintained that on the evening in question they were just having a drinking spree to unwind at Pasion's house, Pasion being a regular student who had just come from the enrollment registration of his school, the Northern Christian College (NCC), for the upcoming semester. Paz, on the other hand, was supposed to go to Pasion's house later that night when he received a text message from Pasion to instead meet at 365 Plaza. Upon his arrival at 365 Plaza, he was suddenly manhandled, searched and arrested by unknown men who turned out to be PDEA officers conducting a purported buy-bust operation. In the main, appellants claimed that they were framed up in a buy-bust operation by the police for no apparent reason.

After trial, the RTC found that the prosecution had fulfilled the required burden of proof and that the prosecution disproved and overcame the presumption of innocence afforded an accused with evidence proving guilt beyond reasonable doubt.

The RTC ruled, thus:

> WHEREFORE, judgment is hereby rendered declaring accused Nathaniel Pasion GUILTY beyond reasonable doubt as charged of illegal sale of shabu under Section 5, Art. II of Republic Act No. 9165 and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱2,000,000.00. Considering though the bargain struck by the accused with the PDEA for his liberty, it is recommended to the Office of the President that the penalty herein imposed be reduced or that clemency be extended to the accused, if appropriate.
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> Likewise, accused Dennis Michael Paz is hereby declared GUILTY beyond reasonable doubt as charged of illegal delivery of *shabu* under Section 5, Art. II of Republic Act No. 9165 and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱2,000,000.00. Said accused is additionally adjudged

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[6] CA *rollo*, pp. 142-151; Brief for the Plaintiff- Appellee.

GUILTY beyond reasonable doubt as charged of illegal possession of *marijuana* weighing 2.9921 gram under par. 3 of Section 11, Art. II of Republic Act No. 9165 and is therefore sentenced to suffer the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS AND ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of ₱300,000.00.[7]

Both accused-appellants Pasion and Paz appealed their conviction. The appellate court subsequently affirmed the RTC's decision:

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated March 19, 2010 and the Order dated June 29, 2010 of the Regional Trial Court, Branch 13, Laoag City in Criminal Cases Nos. 14074, 14075 and 14076, are hereby **AFFIRMED.**[8]

Adamant on their innocence, accused-appellants Pasion and Paz filed the present appeal, *via* Notice of Appeal, before us.

To question the finding of guilt of both the lower courts, accused- appellants Pasion and Paz assail the testimonies of the prosecution witnesses, the Philippine Drug Enforcement Agency (PDEA) officers who conducted the surveillance of appellants, and the separate buy bust operations that led to their apprehension. Accused-appellants Pasion and Paz first insist that the intelligence officers' testimonies were riddled with inconsistencies, specifically on their respective locations during their surveillance of accused-appellants Pasion and Paz which, they argue, indicate that no actual surveillance was carried out.

We disagree.

There is no inconsistency in the testimonies of the PDEA intelligence officers IO1 Merton P. Fesway (IO1 Fesway) and IO1 Efren Esmin (IO1 Esmin), as their narration actually agree on their position "between the tree and the gate" while monitoring the activities of Pasion who was at the waiting shed. From the vantage point on the left side of the National Highway, the

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[7] *Id*. at 139; RTC Decision.

[8] *Rollo*, p. 32; CA Decision.

intelligence officers saw Pasion conduct illegal activities, *i.e.* the sale of what turned out to be dangerous drugs. The alleged discrepancies in the narrations of IO1 Fesway and IO1 Esmin are too minor for the courts to discard their testimonies and conclude that the two were lying. The discrepancy neither affects the truth of the testimonies of prosecution witnesses nor discredits their positive identification of appellant.[9]

Accused-appellants Pasion and Paz consistently question the credibility of the police officers who arrested them in separate buy-bust operations, pointing out the inconsistencies in their testimonies and the joint affidavit of arrest they executed:

> *First,* the affidavit stated that Pasion was standing in front of an improvised gate of his house when the PDEA-INSET arrived but the officers' testimony in court was that Pasion was spotted at the entrance of the alley leading to the latter's house when the PDEA-INSET arrived. *Second*, the affidavit stated that Pasion was in front of his gate when the apprehending officers approached him but IO1 Fesway testified in court that Pasion was able to make several steps away before he was apprehended. *Third*, the affidavit stated that the apprehending officers and the confidential informant were on the left side of Bumanglang Street when they proceeded east towards the alleged place where Pasion was spotted but IO1 Esmin testified that he passed through the right side of Bumanglang Street when they approached Pasion. *Fourth,* the affidavit stated that during the course of entrapment for appellant Paz, it was the said appellant who approached his co-appellant Pasion at their meeting place but IO1 Esmin testified that it was appellant Pasion who approached appellant Paz. *Fifth,* the affidavit stated that IO1 Fesway and IO1 Esmin seized a sachet of marijuana from appellant Pasion but IO1 Esmin claimed in open court that he recovered a sachet of shabu from appellant Pasion.[10]

We are not convinced. As the lower courts have, we likewise adhere to the well-entrenched rule that full faith and credence are given to the narration of police officers who testify for the

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[9] *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 328-329.

[10] *Rollo*, pp. 19-20; CA Decision.

prosecution on the entrapment or buy-bust operation, because as police officers, they are presumed to have regularly performed their duties.[11] Indeed, the presumption of regularity must prevail over appellants' unsubstantiated allegations. This presumption is overturned only if there is clear and convincing evidence that the officers were not properly performing their duty or that they were inspired by improper motive.[12] In this case, there was none.

Very telling is the fact that, while both accused-appellants Pasion and Paz, especially Pasion, claimed that the evidence against them was absolutely planted, they proffered no justification why the police officers would frame them both, at intertwined surrounding circumstances, for sale, delivery and possession of dangerous drugs.

We subscribe to the appellate court's ruling:

> In any criminal prosecution, the defenses of denial and frame-up, like *alibi*, are considered weak defenses and have been invariably viewed by the courts with disfavor for they can just as easily be concocted but are difficult to prove. Negative in their nature, bare denials and accusations of frame-up cannot, as a rule, prevail over the affirmative testimonies of truthful witnesses.
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> The foregoing principle applies with equal, if not greater, force in prosecutions involving violations of [R.A. No.] 9165, especially those originating from buy-bust operations. In such cases, the testimonies of the police officers who conducted the buy-bust operations are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined up against an unsubstantiated denial or claim of frame-up, the testimonies of the officers who caught the accused red-handed are given more weight and usually prevail.
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> In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the

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[11] *People v. Gaspar*, G.R. No. 192816, 26 July 2011, 653 SCRA 673, 688 citing *People v. De Guzman*, G.R No. 177569, 28 November 2007, 539 SCRA 306.

[12] *Id*.

police officers did not properly perform their duties **or** that they were prompted with ill motive.

While the defense denied having violated [R.A. No. 9165], it offered no evidence that the arresting officers had been improperly or maliciously motivated in effecting the arrest of appellants.

W[e] find the story of appellant Pasion incredible that 11 armed men just instantly barged into their house to arrest him and thereafter decided to likewise apprehend his friend appellant Paz.

With nothing to substantiate appellants' malicious accusation that the police officers were improperly motivated, credence shall be given to the narration of the incident by the prosecution witnesses because, being police officers, they are presumed to have performed their duties in a regular manner. Certainly, the presumption of regularity must prevail over appellants' unfounded allegations. Bare denials and the frail defense of frame-up cannot prevail over the categorical and unshaken testimonies of the apprehending officers who nabbed them red-handed and positively identified them as the persons they caught for violation of R.A. 9165 during the buy-bust operation.

There is no question that the PDEA conducted a valid buy-bust operation against appellants in coordination with the police. The regularity of the performance of their duty on this matter could not be overturned absent any convincing evidence to the contrary.[13] (Emphasis omitted)

The prosecution satisfactorily established and proved all the elements of violations of R.A. No. 9165, illegal sale by Pasion and illegal delivery and possession by Paz.

In a prosecution for the illegal sale and illegal delivery of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.[14]

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[13] *Rollo*, pp. 21-22.

[14] *People v. Gonzales*, G.R. No. 182417, 3 April 2013, 695 SCRA 123, 130.

On the other hand, the elements of the crime of possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[15]

To begin with, factual findings of the trial court, especially when affirmed by the appellate court are accorded great weight. We do not reverse these factual findings on appeal except in exceptional circumstances which are not here present.[16]

The prosecution established beyond reasonable doubt, through the testimony of credible police officers, that on separate instances during the same day, after they were placed under surveillance, followed by a buy-bust operation, Pasion, engaged in the illegal sale of *shabu*, a dangerous drug, and Paz, delivered *shabu* and possessed *marijuana*, both dangerous drugs.

Moreover, we agree with the trial court's disquisition on Paz's guilt:

> [D]espite all his protestations of innocence, Dennis Michael Paz has not by his claims overcome the evidence against him that on that late night of June 10, 2009, he appeared in front of the Red Ribbon at the 365 Plaza. His denial has not disproved that he had *shabu* ready to be delivered and which he actually tried to hand over to Nathaniel Pasion but was arrested even before he could do so.
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> x x x x x x x x x
>
> Also, Nathaniel Passion was said to have agreed to cooperate with the PDEA in the entrapment of accused Dennis Michael Paz. He made the bargain for his freedom and the PDEA agents agreed. While Nathaniel Pasion has not admitted it for obvious reasons, this is rather clear from the evidence of the prosecution.[17] x x x

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[15] *People v. De Jesus*, G.R. No. 198794, 6 February 2013, 690 SCRA 180, 200.

[16] *People v. Diwa*, G.R. No. 194253, 27 February 2013, 692 SCRA 260, 268 citing *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 336.

[17] CA *rollo*, pp. 50-52; RTC Decision.

Turning now to the imposable penalty on accused-appellants Pasion and Paz, we sustain the respective penalties imposed on them by the RTC, and affirmed by the CA. Sections 5 and 11, Article II of R.A. No. 9165 provide for the penalty for the illegal sale, illegal delivery and illegal possession, respectively, of dangerous drugs:

Section 5. ***Sale****, Trading, Administration, Dispensation,* ***Delivery****, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis supplied)

x x x x x x x x x

Section 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five Hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives,

without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

Thus:

1. Nathaniel Pasion who was found guilty of illegal sale of *shabu* was correctly sentenced to life imprisonment and fined ₱2,000,000.00;

2. Paz who was found guilty of illegal delivery of *shabu* was likewise correctly sentenced to life imprisonment and fined ₱2,000,000.00 and for the crime of illegal possession of *marijuana* was correctly sentenced to imprisonment of twelve (12) years and one (1) day to fourteen (14) years and fined Three Hundred Thousand Pesos (₱300,000.00).

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04554 and the Regional Trial Court, Branch 13, Laoag City in Criminal Case Nos. 14074, 14075 and 14076 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206526. January 28, 2015]

WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); CREDITABLE WITHHOLDING TAX (CWT); TAX REFUND; BEING IN THE NATURE OF A CLAIM FOR EXEMPTION, REFUND IS CONSTRUED IN *STRICTISSIMI JURIS* AGAINST THE ENTITY CLAIMING THE REFUND AND IN FAVOR OF THE TAXING POWER; REQUIREMENTS.—** The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim. As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must: 1) File the claim with the CIR within the two year period from the date of payment of the tax; 2) Show on the return that the income received was declared as part of the gross income; and 3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

2. **ID.; ID.; ID.; ID.; IRREVOCABILITY RULE; DEFINED.—** The irrevocability rule under Section 76 of the NIRC means that once an option, either for refund or issuance of tax credit certificate or carry-over of CWT has been exercised, the same can no longer be modified for the succeeding taxable years.

3. **ID.; ID.; ID.; ID.; WHAT THE LAW REQUIRES IS TO PROVE THE *PRIMA FACIE* ENTITLEMENT TO A CLAIM,**

INCLUDING THE FACT OF NOT HAVING CARRIED OVER THE EXCESS CREDITS TO THE SUBSEQUENT QUARTERS OR TAXABLE YEAR; PRESENTATION OF QUARTERLY INCOME TAX RETURNS IS NOT ABSOLUTE; RATIONALE.— Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs. In *Philam*, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. x x x The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed. This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund. The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulation No. 2-98 thereof.

4. **ID.; ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE HAS THE EQUALLY IMPORTANT RESPONSIBILITY OF CONTRADICTING TAXPAYER'S CLAIM BY PRESENTING PROOF READILY ON HAND ONCE THE BURDEN OF EVIDENCE SHIFTS TO ITS SIDE; APPLICATION IN CASE AT BAR.—** It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general

burden of proof, shifts to the opposing party, that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files. x x x To the Court, it seems that the CIR languished on its duties to ascertain the veracity of the claims and just hoped that the burden would fall on the petitioner's head once the issue reaches the courts. This mindset ignores the rule that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side. Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash. To review, "[P]reponderance of evidence is [defined as] 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 the 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. x x x Verily, with the petitioner having complied with the requirements for refund, and without the CIR showing contrary evidence other than its bare assertion of the absence of the quarterly ITRs, copies of which are easily verifiable by its very own records, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper. x x x The Court reminds the CIR that substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solution indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received.

LEONEN, *J., dissenting opinion*:

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); CREDITABLE WITHHOLDING TAX (CWT); TAX REFUND; THE PRESENTATION OF BOTH THE QUARTERLY INCOME TAX RETURNS AND THE

INCOME TAX RETURN OF THE SUCCEEDING YEAR IS INDISPENSABLE IN A REFUND CLAIM; SUSTAINED.— I submit that the presentation of **both** the quarterly income tax returns and the income tax return of the succeeding year is indispensable in a refund claim. This is implicit in Section 76: x x x **Section 76 introduced two significant changes in the National Internal Revenue Code: *first,* once the taxpayer has chosen the carry-over option, such option is irrevocable; and *second,* the excess tax payments may be carried over and applied against the income tax liabilities for the succeeding quarters of the succeeding taxable years until fully utilized.** x x x Section 76 is clear and categorical that once the carry-over option is chosen, it shall be considered *irrevocable* for the whole amount of the excess income tax and no application for a tax refund or issuance of a tax credit certificate shall then be allowed. It has been held that "the irrevocable rule was evidently added to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards the taxpayer's excess tax credit." x x x Indeed, Section 75 of the National Internal Revenue Code requires corporate taxpayers to file quarterly income tax returns showing "a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax shall be paid." Section 76 allows excess tax payments to be applied against estimated quarterly tax liabilities. Therefore, the earliest opportunity when taxpayers may carry over and apply their previous year's excess tax payments would be the first quarter of the succeeding year. x x x. Hence, the figures of gross receipts and deductions in the quarterly income tax returns are subject to audit and adjustment by the end of the year in the final adjustment return. This means that a taxpayer may realize a net income in the first quarter but incur an estimated loss in the succeeding quarters resulting in a net loss by the end of the year. It may happen then that the previous year's overpayments, which a taxpayer seeks to be refunded by the end of the year, was actually carried over and included as "prior years' excess credits" in the first quarter of the succeeding year. As such, the refund claim by the end of the year cannot prosper because having exercised the carry-over option in the first quarter, the taxpayer is bound by the irrevocable rule. This is the significance of requiring the

presentation of the quarterly returns in addition to the ITR/FAR of the succeeding year. x x x Hence, the taxpayer-claimant must necessarily present the quarterly income tax returns and final adjustment return of the succeeding taxable year.

2. **ID.; ID.; ID.; ID.; IRREVOCABLE RULE; A TAXPAYER WHICH OPTED TO CARRY OVER ITS PREVIOUS YEAR'S OVERPAYMENTS IN THE SUCCEEDING FIRST, SECOND, OR THIRD QUARTERLY RETURNS CAN NO LONGER CHANGE ITS PREVIOUS INTENTION TO CARRY OVER; APPLICATION IN CASE AT BAR.—** While a taxpayer is allowed to modify or amend its quarterly income tax returns or annual income tax return under Section 6 of the National Internal Revenue Code, an exception would be the irrevocable rule under Section 76 such that a taxpayer which opted to carry over its previous year's overpayments in the succeeding first, second, or third quarterly returns can no longer change its previous intention to carry over. To reiterate, the 2004 ITR/FAR alone is not sufficient proof that petitioner did not exercise the carry-over option in any of the quarters of 2004. The best evidence to prove that it did not exercise the carry-over option in any of the quarters would be the quarterly returns. Thus, petitioner's failure to present sufficient evidence to justify its claim for refund is fatal to its cause. After all, it is axiomatic that a claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. "The taxpayer is charged with the heavy burden of proving that [it] has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund." Even if the claim for refund was filed within the two-year prescriptive period, the fact of withholding of creditable taxes by the withholding agents was proven and the income upon which the withholding taxes were withheld was included as part of the gross income and was reflected in the preceding income tax return, nonetheless, the taxpayer should prove that the excess creditable withholding tax was not carried over to the taxable quarters of the succeeding taxable years.

3. **ID.; ID.; ID.; ID.; ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE; RATIONALE.—** "Entitlement to a tax refund is for the taxpayer to prove and

not for the government to disprove." Parenthetically, it would be faster to process claims for refund if all the pieces of information necessary to verify the veracity of the taxpayer's claims were furnished by the taxpayer-claimant, including the quarterly returns and income tax return of the succeeding year than to have the Bureau of Internal Revenue search for these documents in its files. Given the limited manpower of the Bureau of Internal Revenue to investigate all returns and requests, expediency necessitates that evidentiary matters be within the control of the taxpayer claiming a refund. The Bureau's primary function of tax collection should not be unduly delayed or hampered by incidental matters. Requiring the taxpayer to submit sufficient evidence ensures a more prompt action on its claim for refund and promotes a more efficient outcome. Efficiency is achieved when tasks, which necessarily entail costs, are allocated to those who could best bear them. A party that could best bear the cost is not necessarily the one who could do the task with the least cost, but a party's opportunity costs should also be taken into consideration. This concept is known as *comparative* advantage. This is contrasted with *absolute* advantage, which does not take into consideration the opportunity costs.

APPEARANCES OF COUNSEL

Raviev Tobias M. Racho and Ray-An Francis V. Baybay for petitioner.

The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review under Rule 45 of the Rules of Court and Rule 16 of the Revised Rules of the Court of Tax Appeals, Winebrenner & Iñigo Insurance Brokers, Inc. *(petitioner)* seeks the review of the March 22, 2013 Decision[1]

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[1] *Rollo,* pp. 36-49. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelita R. Cotangco-Manalastas, concurring and with Associate Justices Juanito C. Castañeda and Esperanza R. Fabon-Victorino, dissenting.

of the Court of Tax Appeals En Banc *(CTA-En Banc)*. In the said decision, the CTA-*En Banc* affirmed the denial of petitioner's judicial claim for refund or issuance of tax credit certificate for excess and unutilized creditable withholding tax *(CWT)* for the 1st to 4th quarter of calendar year *(CY)* 2003 amounting to ₱4,073,954.00. In denying the refund, the CTA-*En Banc* held that petitioner failed to prove that the excess CWT for CY 2003 was not carried over to the succeeding quarters of the subject taxable year. Under the 1997 National Internal Revenue Code *(NIRC)*, a taxpayer must not have exercised the option to carry over the excess CWT for a particular taxable year in order to qualify for refund.

The Factual Antecedents

On April 15, 2004, petitioner filed its Annual Income Tax Return for CY 2003.

About two years thereafter or on April 7, 2006, petitioner applied for the administrative tax credit/refund claiming entitlement to the refund of its excess or unutilized CWT for CY 2003, by filing BIR Form No. 1914 with the Revenue District Office No. 50 of the Bureau of Internal Revenue *(BIR)*.

There being no action taken on the said claim, a petition for review was filed by petitioner before the CTA on April 11, 2006. The case was docketed as CTA Case No. 7440 and was raffled to the Special First Division *(CTA Division)*.

On April 13, 2010, CTA Division partially granted petitioner's claim for refund of excess and unutilized CWT for CY 2003 in the reduced amount of ₱2,737,903.34 in its April 13, 2010 Decision[2] *(original decision)*. The dispositive portion of the decision reads:

In view of the foregoing, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby

[2] *Id*. at 56-69. Penned by Associate Justice Caesar A. Casanova, with then Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

ORDERED to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of ₱2,737,903.34 representing its excess/unutilized creditable withholding taxes for the year 2003.

SO ORDERED.[3]

Petitioner filed a Motion for Partial Reconsideration with Leave to Submit Supplemental Evidence. It prayed that an amended decision be issued granting the entirety of its claim for refund, or in the alternative, that it be allowed to submit and offer relevant documents as supplemental evidence.

Respondent Commissioner of Internal Revenue *(CIR)* also moved for reconsideration, praying for the denial of the entire amount of refund because petitioner failed to present the quarterly Income Tax Returns *(ITRs)* for CY 2004. To the CIR, the presentation of the 2004 quarterly ITRs was indispensable in proving petitioner's entitlement to the claimed amount because it would prove that no carry-over of unutilized and excess CWT for the four (4) quarters of CY 2003 to the succeeding four (4) quarters of CY 2004 was made. In the absence of said ITRs, no refund could be granted. In the CIR's view, this was in accordance with the irrevocability rule under Section 76 of the NIRC which reads:

> SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file an adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credits; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount

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[3] *Id.* at 68.

shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

On July 27, 2011, the CTA-Division *reversed* itself. In an Amended Decision,[4] it denied the entire claim of petitioner. It reasoned out that petitioner should have presented as evidence its first, second and third quarterly ITRs for the year 2004 to prove that the unutilized CWT being claimed had not been carried over to the succeeding quarters. Thus:

WHEREFORE, in view of the foregoing, petitioner's Motion for Partial Reconsideration is hereby **DENIED** while respondent's Motion for Reconsideration is hereby **GRANTED**. Accordingly, the Decision dated April 13, 2010 granting petitioner's claim in the reduced amount of ₱2,737,903.34 is hereby **REVERSED AND SET ASIDE**. Consequently, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.[5]

Aggrieved, petitioner elevated the case to the CTA *En Banc* praying for the reversal of the Amended Decision of the CTA Division.

In its March 22, 2013 Decision,[6] the CTA-*En Banc* affirmed the Amended Decision of the CTA-Division. It stated that before a cash refund or an issuance of tax credit certificate for unutilized

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[4] *Id*. at 71-85. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring.

[5] *Id*. at 84-85.

[6] *Id*. at 36-49. Penned by Associate Justice Erlinda P. Uy, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelita R. Cotangco-Manalastas, concurring and with Associate Justices Juanito C. Castañeda and Esperanza R. Fabon-Victorino, dissenting.

excess tax credits could be granted, it was essential for petitioner to establish and prove, by presenting the quarterly ITRs of the succeeding years, that the excess CWT was not carried over to the succeeding taxable quarters considering that the option to carry over in the succeeding taxable quarters could not be modified in the final adjustment returns *(FAR)*. Because petitioner did not present the first, second and third quarterly ITRs for CY 2004, despite having offered and submitted the Annual ITR/ FAR for the same year, the CTA-*En Banc* stated that the petitioner failed to discharge its burden, hence, no refund could be granted. In justifying its conclusions, the CTA-*En Banc* cited its own case of *Millennium Business Services, Inc. v. Commissioner of Internal Revenue (Millennium)*[7] wherein it held as follows:

> Since the burden of proof is upon the claimant to show that the amount claimed was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and final adjustment return is indispensable to prove that it did not carry over or utilized the claimed excess creditable withholding taxes. Absent thereof, there will be no basis for a taxpayer's claim for refund since there will be no evidence that the taxpayer did not carry over or utilize the claimed excess creditable withholding taxes to the succeeding taxable quarters.
>
> Significantly, a taxpayer may amend its quarterly income tax return or annual income tax return or Final Adjustment Return, which in any case may modify the previous intention to carry-over, apply as tax credit certificate or refund, as the case may be. But the option to carry over in the succeeding taxable quarters under the irrevocability rule cannot be modified in its final adjustment return.
>
> The presentation of the final adjustment return does not shift the burden of proof that the excess creditable withholding tax was not utilized or carried over to the first three (3) taxable quarters. It remains with the taxpayer claimant. It goes without saying that final adjustment returns of the preceding and the succeeding taxable years are not sufficient to prove that the amount claimed was utilized or carried over to the first three (3) taxable quarters.

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[7] CTA EB No. 510, Decision dated September 28, 2010, with Entry of Judgment dated October 28, 2010, https://www.google.com.ph/?gws_rd=ssl#q=CTA+EB+510+; last visited August 29, 2014.

The importance of the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year need not be overly emphasized. All corporations subject to income tax, are required to file quarterly income tax returns, on a cumulative basis for the preceding quarters, upon which payment of their income tax has been made. In addition to the quarterly income tax returns, corporations are required to file a final or adjustment return on or before the fifteenth day of April. The quarterly income tax return, like the final adjustment return, is the most reliable firsthand evidence of corporate acts pertaining to income taxes, as it includes the itemization and summary of additions to and deductions from the income tax due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process, and guide this Court to the veracity of a petitioner's claim for refund without which petitioner could not prove with certainty that the claimed amount was not utilized or carried over to the succeeding quarters or the option to carry over and apply the excess was effectively chosen despite the intent to claim a refund.

In the same vein, if the government wants to disprove that the excess creditable withholding tax was not utilized or carried over to the succeeding taxable quarters, the presentation of the succeeding quarterly income tax return and the annual income tax return of the subsequent taxable year indicating utilization or carrying over are [sic] indispensible. However, the claimant must first establish its claim for refund, such that it did not utilize or carry over or that it opted to utilize and carry over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable year.

Concomitantly, the presentation of the quarterly income tax return and the annual income tax return to prove the fact that excess creditable withholding tax was not utilized or carried over or opted to be utilized and carried over to the 1st, 2nd, 3rd quarters and final adjustment return of the succeeding taxable quarter is not only for convenience to facilitate the tax administration process but it is part of the requisites to establish the claim for refund. Section 76 of the NIRC of 1997 provides that if the taxpayer claimant carries over and applies the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, the same is irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed.[8]

[8] *Rollo,* p. 45-47. Penned by Associate Justice Cielito N. Mindaro-Grulla, with then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C.

Hence, this petition.

Noteworthy is the fact that the CTA-*En Banc* ruling was met with two dissents from Associate Justices Juanito C. Castañeda *(Justice Castañeda)* and Esperanza R. Fabon-Victorino *(Justice Fabon-Victorino)*.

In his Dissenting Opinion[9] which was concurred in by Justice Fabon-Victorino, Justice Castañeda expressed the view that the CTA-*En Banc* should have reinstated the CTA-Division's original decision because in the cases of *Philam Asset Management Inc. (Philam) v. Commissioner of Internal Revenue;*[10] *State Land Investment Corporation (State Land) v. Commissioner of Internal Revenue;*[11] *Commissioner of Internal Revenue v. PERF Realty Corporation (PERF Realty);*[12] *and Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation (Mirant)*,[13] this Court already ruled that requiring the ITR or the FAR for the succeeding year in a claim for refund had no basis in law and jurisprudence. According to him, the submission of the FAR of the succeeding taxable year was not required under the law to prove the claimant's entitlement to excess or unutilized CWT, and by following logic, the submission of quarterly income tax returns for the subsequent taxable period was likewise unnecessary. He found no justifiable reason not to follow the existing rulings of this Court.

Petitioner's reasoning in this petition echoes the dissenting opinion of Justice Castaneda. It further submits that despite the non-presentation of the quarterly ITRs, it has sufficiently shown that the excess CWT for CY 2003 was not carried over or applied to its income tax liabilities for CY 2004, as shown in

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Castañeda, Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, concurring.

[9] *Id.* at 50-54.

[10] 514 Phil. 147 (2005).

[11] 566 Phil. 113 (2008).

[12] 579 Phil. 442 (2008).

[13] G.R. No. 171742, June 15, 2011, 652 SCRA 80.

the Annual ITR for 2004 it submitted. Thus, petitioner insists that its refund should have been granted. Petitioner further avers, in its Reply,[14] that even if *Millennium Business* case was applicable, such must be given prospective effect considering that this case was litigated on the basis of the doctrines laid down in *Philam, State Land* and *PERF Realty* cases wherein the submission of quarterly ITRs in a case for tax refund was held by this Court as not mandatory.

In its Comment,[15] the CIR counters that even if the taxpayer signifies the option for either tax refund or carry-over as tax credit, this does not *ipso facto* confer the right to avail of the option immediately. There is a need, according to the CIR, for an investigation to ascertain the correctness of the corporate returns and the amount sought to be credited; and part of which is to look into the quarterly returns so that it may be determined whether or not excess and unutilized CWT was carried over into the succeeding quarters of the next taxable year. Because the pertinent quarterly ITRs were not presented, the CIR submits that the petitioner failed to prove its right to a tax refund.

Issue

The sole issue here is whether the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is indispensable in a claim for refund.

The Court's Ruling

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer.[16] Being in the nature of a claim for exemption,[17] refund

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[14] *Rollo,* no pagination [counted as pp. 121-131].

[15] *Id.* at 90-106.

[16] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, 679 SCRA 305, 316, citing *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil. 149, 163 (2005).

[17] *Commissioner of Internal Revenue v. Solidbank Corp.,* 462 Phil. 96, 132 (2003); citations omitted.

is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.[18] This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim. As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:

1) File the claim with the CIR within the two year period from the date of payment of the tax;

2) Show on the return that the income received was declared as part of the gross income; and

3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.[19]

The original decision of the CTA-Division made plain that the petitioner complied with the above requisites in so far as the reduced amount of ₱2,737,903.34 was concerned. In the amended decision, however, it was pointed out that because petitioner failed to present the quarterly ITRs of the subsequent year, there was an impossibility of determining compliance with the irrevocability rule under Section 76 of the NIRC as in those documents could be found evidence of whether the excess CWT was applied to its income tax liabilities in the quarters of 2004. The irrevocability rule under Section 76 of the NIRC means that once an option, either for refund or issuance of tax credit

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[18] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 569 Phil. 483, 494 (2008).

[19] *Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011, 652 SCRA 80, 95 and *Commissioner of Internal Revenue v. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013, 707 SCRA 467, 474, citing *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417, 424, further citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 36-37 (2007).

certificate or carry-over of CWT has been exercised, the same can no longer be modified for the succeeding taxable years.[20] For said reason, the CTA-*En Banc* affirmed the conclusion in the amended decision that because of the said impossibility, the claim for refund was not substantiated.

The CIR agrees with the disposition of the CTA-*En Banc,* stressing that the petitioner failed to carry out the burden of showing that no carry-over was made when it did not present the quarterly ITRs for CY 2004.

Petitioner disagrees, as the dissents did, that the non-submission of quarterly ITRs is fatal to its claim.

Hence, the issue on the indispensability of quarterly ITRs of the succeeding taxable year in a claim for refund.

The Court finds for the petitioner.

There is no question that those who claim must not only prove its entitlement to the excess credits, but likewise must prove that no carry-over has been made in cases where refund is sought.

In this case, the fact of having carried over petitioner's 2003 excess credits to succeeding taxable year is in issue. According to the CTA-*En Banc* and the CIR, the only evidence that can sufficiently show that carrying over has been made is to present the quarterly ITRs. Some members of this Court adhere to the same view.

The Court however cannot.

Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs.

In *Philam*, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. The CIR opposed the claim, on the grounds similar to the case at hand, that no proof was provided showing the non-carry over of excess CWT

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[20] *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* G.R. No. 171766, July 29, 2010, 626 SCRA 172, 179.

to the subsequent quarters of the subject year. In a categorical manner, the Court ruled that the presentation of the quarterly ITRs was not necessary. Therein, it was written:

> Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.
>
> First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any provisions of the [NIRC] that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.
>
> Second, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.

It has been submitted that *Philam* cannot be cited as a precedent to hold that the presentation of the quarterly income tax return is not indispensable as it appears that *the quarterly returns for the succeeding year were presented* when the petitioner therein filed an administrative claim for the refund of its excess taxes withheld in 1997.

It appears however that there is misunderstanding in the ruling of the Court in *Philam*. That factual distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable. The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent

quarters or taxable year. It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed.

This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund.

The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulation No. 2-98 thereof. There, it provides as follows:

SECTION 2.58.3. *Claim for Tax Credit or Refund.*

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payer to the payee showing the amount paid and the amount of tax withheld therefrom.

x x x x x x x x x

Evident from the above is the absence of any categorical pronouncement of requiring the presentation of the succeeding quarterly ITRs in order to prove the fact of non-carrying over.

To say the least, the Court rules that as to the means of proving it, It has no power to *unduly* restrict it.

In this case, it confounds the Court why the CTA did not recognize and discuss in detail the sufficiency of the annual ITR for 2004,[21] which was submitted by the petitioner. The CTA in fact said:

> In the present case, while petitioner did offer its Annual ITR/ Final Adjustment Return for taxable year 2004, it appears that petitioner miserably failed to submit and offer as part of its evidence the first, second, and third Quarterly ITRs for the year 2004. Consequently, petitioner was not able to prove that it did not exercise its option to carry-over its excess CWT.[22]

Petitioner claims that the requirement of proof showing the non-carry over has been established in said document.

Indeed, an annual ITR contains the total taxable income earned for the four (4) quarters of a taxable year, as well as deductions and tax credits previously reported or carried over in the quarterly income tax returns for the subject period. A quick look at the Annual ITR reveals this fact:

Aggregate Income Tax Due

Less Tax Credits/Payments

Prior Year's excess Credits – Taxes withheld

Tax Payment (s) for the Previous Quarter (s) of the same taxable year other than MCIT

x x x x x x x x x

Creditable Tax Withheld for the Previous Quarter (s)

Creditable Tax Withheld Per BIR Form No. 2307 for this Quarter

x x x x x x x x x[23]

It goes without saying that the annual ITR (including any other proof that may be sufficient to the Court) can sufficiently

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[21] CA records, Vol. 1, pp. 809-810.

[22] *Rollo,* p. 45.

[23] See BIR Form No. 1702 Annual Income Tax Return.

reveal whether carry over has been made in subsequent quarters even if the petitioner has chosen the option of tax credit or refund in the immediately 2003 annual ITR.

Section 76 of the NIRC requires a corporation to file a Final Adjustment Return (or Annual ITR) covering the total taxable income for the preceding calendar or fiscal year. The total taxable income contains the combined income for the four quarters of the taxable year, as well as the deductions and excess tax credits carried over in the quarterly income tax returns for the same period.

If the excess tax credits of the preceding year were deducted, whether in whole or in part, from the estimated income tax liabilities of any of the taxable quarters of the succeeding taxable year, the total amount of the tax credits deducted for the entire taxable year should appear in the Annual ITR under the item "Prior Year's Excess Credits." Otherwise, or if the tax credits were carried over to the succeeding quarters and the corporation did not report it in the annual ITR, there would be a discrepancy in the amounts of combined income and tax credits carried over for all quarters and the corporation would end up shouldering a bigger tax payable. It must be remembered that *taxes computed in the quarterly returns are mere estimates. It is the annual ITR which shows the aggregate amounts of income, deductions, and credits for all quarters of the taxable year. It is the final adjustment return which shows whether a corporation incurred a loss or gained a profit during the taxable quarter.*[24] Thus, the presentation of the annual ITR would suffice in proving that prior year's excess credits were not utilized for the taxable year in order to make a final determination of the total tax due.

In this case, petitioner reported an overpayment in the amount of ₱7,194,213.00 in its annual ITR for the year ended December 2003:

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[24] *BPI-Family Savings Bank, Inc. v. Court of Appeals,* 386 Phil. 719 (2000).

Annual ITR 2003	
Income Tax Due	1,259,259.00
Less: Prior Year's Excess Credits (2002 Annual ITR)	(4,379,518.00)
Creditable Tax Withheld for the 4th Quarter	(4,073,954.00)
Tax Payable / (Overpayment)	(7,194,213.00)

For the overpayment, petitioner chose the option "To be issued a Tax Credit Certificate." In its Annual ITR for the year ended December 2004, petitioner did not report the Creditable Tax Withheld for the 4th quarter of 2003 in the amount of ₱4,073,954.00 as prior year's excess credits. As shown in the 2004 ITR:

Annual ITR 2004	
Income Tax Due	1,321,409.00
Less: Prior Year's Excess Credits	**-**
Creditable Tax Withheld for the 4th Quarter	(3,689,419.00)
Tax Payable / (Overpayment)	(2,368,010.00)

Verily, the absence of any amount written in the Prior Year excess Credit – Tax Withheld portion of petitioner's 2004 annual ITR clearly shows that no prior excess credits were carried over in the first four quarters of 2004. And since petitioner was able to sufficiently prove that excess tax credits in 2003 were not carried over to taxable year 2004 by leaving the item "Prior Year's Excess Credits" as blank in its 2004 annual ITR, then petitioner is entitled to a refund. Unfortunately, the CTA, in denying entirely the claim, merely relied on the absence of the quarterly ITRs despite being able to verify the truthfulness of the declaration that no carry over was indeed effected by simply looking at the 2004 annual ITR.

At this point, worth mentioning is the fact that subsequent cases affirm the proposition as correctly pointed out by petitioner. *State Land*, *PERF* and *Mirant* reiterated the rule that the presentation of the quarterly ITRs of the subsequent year is not mandatory on the part of the claimant to prove its claims.

There are some who challenges the applicability of *PERF* in the case at bar. It is said that *PERF* is not in point because the Annual ITR for the succeeding year had actually been attached

to *PERF's* motion for reconsideration with the CTA and had formed part of the records of the case.

Clearly, if the Annual ITR has been recognized by this Court in *PERF*, why then would the submitted 2004 Annual ITR in this case be insufficient despite the absence of the quarterly ITRs? Why then would this Court require more than what is enough and deny a claim even if the minimum burden has been overcome? At best, the existence of quarterly ITRs would have the effect of strengthening a proven fact. And as such, may only be considered corroborative evidence, obviously not indispensable in character. *PERF* simply affirms that quarterly ITRs are not indispensable, provided that there is sufficient proof that carrying over excess CWT was not effected.

Stateland and *Mirant* are equally challenged. In all these cases however, the factual distinctions only serve to bolster the proposition that succeeding quarterly ITRs are not indispensable. Implicit from all these cases is the Court's recognition that proving carry-over is an evidentiary matter and that the submission of quarterly ITRs is but a means to prove the fact of one's entitlement to a refund and not a condition *sine qua non* for the success of refund. True, it would have been better, easier and more efficient for the CTA and the CIR to have as basis the quarterly ITRs, but it is not the only way considering further that in this case, the Annual ITR for 2004 is sufficient. Courts are here to painstakingly weigh evidence so that justice and equity in the end will prevail.

It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party,[25] that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files.

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[25] *Jimenez v. National Labor Relations Commission*, 326 Phil. 89, 95 (1996).

All along, the CIR espouses the view that it must be given ample opportunity to investigate the veracity of the claims. Thus, the Court asks: In the process of investigation at the administrative level to determine the right of the petitioner to the claimed amount, did the CIR, with all its resources even attempt to verify the quarterly ITRs it had in its files? Certainly, it did not as the application was met by the inaction of the CIR. And if desirous in its effort to clearly verify petitioner's claim, it should have had the time, resources and the liberty to do so. Yet, nothing was produced during trial to destroy the *prima facie* right of the petitioner by counterchecking the claims with the quarterly ITRs the CIR has on its file. To the Court, it seems that the CIR languished on its duties to ascertain the veracity of the claims and just hoped that the burden would fall on the petitioner's head once the issue reaches the courts.

This mindset ignores the rule that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side. Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash. To review, "[P]reponderance of evidence is [defined as] 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 the 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.[26]

The CIR must then be reminded that in *Philam*, the CIR's "*failure to present* [the quarterly ITRs and AFR] to support its contention against the grant of a tax refund to [a claimant] is certainly fatal." *PERF* reinforces this with a sweeping statement holding that the verification process is not incumbent on *PERF*

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[26] *Peñalber v. Ramos*, G.R. No. 178645, January 30, 2009, 577 CRA 509, 526-527, citing *Ong v. Yap*, 492 Phil. 188, 196-197 (2005). Emphasis supplied.

[or any claimant for that matter]; [but] is the duty of the CIR to verify whether xxx excess income taxes [have been carried over].

And should there be a possibility that a claimant may have violated the irrevocability rule and thereafter claim twice from its credits, no one is to be blamed but the CIR for not discharging its burden of evidence to destroy a claimant's right to a refund. At any rate, a claimant who defrauds the government cannot escape liability be it criminal or civil in nature.

Verily, with the petitioner having complied with the requirements for refund, and without the CIR showing contrary evidence other than its bare assertion of the absence of the quarterly ITRs, copies of which are easily verifiable by its very own records, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

The Court does not, and cannot, however, grant the entire claimed amount as it finds no error in the original decision of the CTA Division granting refund to the reduced amount of ₱2,737,903.34. This finding of fact is given respect, if not finality, as the CTA,[27] which by the very nature of its functions of dedicating itself exclusively to the consideration of the tax problems has necessarily developed an expertise on the subject.[28] It being the case, the Court partly grants this petition to the extent of reinstating the April 23, 2010 original decision of the CTA Division.

The Court reminds the CIR that substantial justice, equity and fair play take precedence over technicalities and legalisms.

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[27] *Commissioner of Internal Revenue v. Toledo Power, Inc.*, G.R. No. 183880, January 20, 2014, 714 SCRA 276.

[28] *Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*, *supra* note 19, at 94, citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,* G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561, further citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation,* 491 Phil. 625, 640 (2005), further citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* 529 Phil. 785, 794-795 (2006).

The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen[29] or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solution indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received.[30]

Finally, even assuming that the Court reverses itself and pronounces the indispensability of presenting the quarterly ITRs to prove entitlement to the claimed refund, petitioner should not be prejudiced for relying on *Philam*. The CTA *En Banc* merely based its pronouncement on a case that does not enjoy the benefit of *stare decis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established."[31] As between a CTA *En Banc* Decision *(Millennium)* and this Court's Decision *(Philam)*, it is elementary that the latter should prevail.

WHEREFORE, the Court partly grants the petition. The March 22, 2013 Decision of the Court of Tax Appeals *En Banc* is **REVERSED**. The April 13, 2010 Decision of the Court of Tax Appeals Special First Division is **REINSTATED**. Respondent Commissioner of Internal Revenue is ordered to **REFUND** to petitioner the amount of ₱2,737,903.34 as excess creditable withholding tax paid for taxable year 2003.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr., del Castillo, JJ., concur.

Leonen, J., dissents. See separate opinion.

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[29] *Supra* note 24.

[30] *State Land Investment Corporation v. Commissioner of Internal Revenue*, 566 Phil. 113, 122 (2008).

[31] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR),* 548 Phil. 498, 534 (2007), citing *Black's Law Dictionary,* Fifth Edition.

[*] Designated Acting member in liue of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

DISSENTING OPINION

LEONEN, *J.*:

I disagree with the *ponencia* that the submission of quarterly income tax returns of the succeeding year is not indispensable in a claim for refund of the previous year's excess or unutilized creditable withholding taxes.

Section 76 of the 1997 National Internal Revenue Code is clear and categorical that once the taxpayer chooses to carry over and apply its income tax overpayments against the income tax due for the quarters of the succeeding taxable year, such option shall be considered irrevocable. The taxpayer can no longer make a turnaround and claim instead a refund of the overpayments. I submit that **both** the quarterly income tax returns (for the first to third quarters) and the income tax return/final adjustment return (ITR/FAR) of the succeeding year are indispensable proofs to show whether the taxpayer availed of the carry-over option or not.

It must be emphasized that this is the first time that the indispensability of presenting the quarterly returns in tax refund claims in light of Section 76 of the 1997 National Internal Revenue Code is raised.

The cases cited in the ponencia, namely, *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[1] *State*

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[1] 514 Phil. 147 (2005) [Per *J.* Panganiban, Third Division]. In **G.R. No. 156637**, *Philam* paid excess income tax for 1997. It did not indicate its option to carry over or refund said excess income tax in its income tax return for 1997. On September 11, 1998, however, it filed a claim for refund of the same. In **G.R. No. 162004**, *Philam* incurred a net loss in 1998 and had unapplied excess creditable income tax for the same period in the amount of ₱459,756.07. In its income tax return for the succeeding year of 1999, *Philam* reported a tax due of only ₱80,042.00, creditable withholding tax of ₱915,995.00, and excess credit carried over from 1998 of ₱459,756.07. On November 14, 2000, Philam filed a claim for tax refund, alleging that its tax liability for 1999 was deducted from its creditable withholding tax for the same taxable period, leaving its excess tax credit carried over from 1998 still unapplied.

Land Investment Corporation v. Commissioner of Internal Revenue,[2] *Commissioner of Internal Revenue v. PERF Realty Corporation*,[3] *and Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*[4] are not squarely in point.

Philam's ruling in G.R. No. 156337[5] that the presentation to the Bureau of Internal Revenue of the ITR/FAR of the succeeding

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[2] 566 Phil. 113, 120-121 (2008) [Per *J.* Sandoval-Gutierrez, First Division].

[3] 579 Phil. 442 (2008) [Per *J.* Reyes, R.T., Third Division].

[4] G.R. No. 171742, June 15, 2011, 652 SCRA 80 [Per J. Mendoza, Second Division].

[5] The issue in G.R. No. 156637 of *Philam* was whether the presentation of the ITR/FAR of the succeeding year is necessary. This court, in ruling that the 1998 ITR/FAR is not required in requesting a refund of excess taxes withheld in 1997, reasoned:

1) Section 76 does not mandate it. The law merely requires the filing of the FAR for the preceding — not the succeeding — taxable year.
2) Section 5 of Revenue Regulation No. 12-94, amending Section 10(a) of Revenue Regulation No. 6-85, merely provides that claims for refund shall be given due course only (a) if it is shown on the income tax return that the income payment received is being declared part of the taxpayer's gross income; and (b) when the fact of withholding is established by copy of the withholding tax statement, duly issued by the payor to the payee and showing the amount paid and the income tax withheld from that amount.
3) The Bureau of Internal Revenue must "have on file its own copies of *Philam*'s [1998] FAR, on the basis of which it could rebut the assertion that there was no subsequent credit of the excess income tax payments for [1997]."
4) The Court of Tax Appeals should have taken judicial notice of the fact of filing and the pendency of *Philam*'s subsequent claim for a refund of excess creditable taxes withheld for 1998.

It appears, though, that *Philam* presented its quarterly returns for 1998, as evident from the following findings of the court:

In the present case, although petitioner did not mark the refund box in its 1997 FAR, neither did it perform any act indicating that it chose a tax credit. On the contrary, it filed on September 11, 1998 an administrative claim for the refund of its excess taxes withheld in 1997. **In none of its quarterly returns for 1998 did it apply**

year has no legal basis was premised on the old provision (Section 69 of the 1977 National Internal Revenue Code), which did not yet contain the "irrevocable clause." Instead, the old provision merely provided that "[i]n case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

Section 69 provides:

Section 69.[6] *Final Adjustment Return.* — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year[,] the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

On the other hand, Section 76 included that "[o]nce the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

Moreover, the presentation in *Philam* of the 1998 ITR/FAR was not necessary because the taxpayer had apparently submitted

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the excess creditable taxes. Under these circumstances, petitioner is entitled to a tax refund of its 1997 excess tax credits in the amount of ₱522,092.00.

[6] *Philam* stated that Section 69 reappeared in the National Internal Revenue Code (or Tax Code) of 1997 as Section 76.

its quarterly returns for 1998 showing it did not carry over and apply its 1997 excess creditable taxes, coupled with the filing of its administrative claim for refund on September 11, 1998 even before the year's end.

State Land was likewise decided on the basis of Section 69 of the 1977 National Internal Revenue Code. This court held that "if the excess income taxes paid in a given taxable year have not been entirely used by a . . . corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years."[7] Accordingly, the amount of State Land's excess tax credit in 1997 that was not used in 1998 was allowed to be refunded. In this regard, this court further held that it was not necessary on the part of State Land to file its 1999 income tax return because pursuant to then Section 69, it could not utilize its 1997 excess credits beyond 1998.[8]

PERF was similarly decided on the basis of the old tax provision. This court held that PERF's failure to indicate its option in its income tax return to avail of either the tax refund or tax credit was not fatal to its claim for refund.[9] Moreover, it was determined that there was no need to rule on the admissibility of the income tax return for the succeeding year (1998 income tax return) because it had actually been attached to PERF's Motion for Reconsideration before the Court of Tax Appeals and had formed part of the records of the case. The income tax return showed that the excess credits in 1997 were not carried over and applied in 1998.[10]

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[7] *State Land Investment Corporation v. Commissioner of Internal Revenue*, 566 Phil. 113, 120-121 (2008) [Per *J*. Sandoval-Gutierrez, First Division].

[8] *Id*. at 121.

[9] *Commissioner of Internal Revenue v. PERF Realty Corp.,* 579 Phil. 442, 448 (2008) [Per *J*. Reyes, R.T., Third Division].

[10] *Id*. at 448-454.

On the other hand, while *Mirant* was decided on the basis of Section 76 of the 1997 National Internal Revenue Code, it did not touch on the issue of presenting the quarterly income tax returns. Understandably, because in that case, Mirant opted to carry over its tax overpayment for 1999 by ticking the box in the return signifying that the overpayment was "to be carried over as tax credit next year/quarter."[11] This court held that pursuant to the irrevocability rule in Section 76, Mirant was barred from applying for the refund/issuance of tax credit certificate of the overpayments.[12]

In all of these cases — *Philam, State Land, PERF,* and *Mirant* — the issue on the indispensability of presenting the quarterly income tax returns of the succeeding year in a refund claim was never raised especially in light of the "irrevocability rule" that was added by Republic Act No. 8424 in Section 76. Here, this question was squarely raised as the core issue.

The ponencia is of the view that the presentation of the quarterly income tax returns for 2004 is not indispensable because petitioner already submitted its 2004 income tax return.

I submit that the presentation of **both** the quarterly income tax returns and the income tax return of the succeeding year is indispensable in a refund claim. This is implicit in Section 76:

SEC. 76. Final Adjustment Return. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

[11] *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,* G.R. No. 171742, June 15, 2011, 652 SCRA 80, 93-94 [Per *J.* Mendoza, Second Division].

[12] *Id*. at 100.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, *the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.* ***Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore.*** (Emphasis supplied)

Section 76 introduced two significant changes in the National Internal Revenue Code: *first,* once the taxpayer has chosen the carry-over option, such option is irrevocable; and *second,* the excess tax payments may be carried over and applied against the income tax liabilities for the succeeding quarters of the succeeding taxable years until fully utilized.

This court elucidated the differences between the two provisions in *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*:[13]

Under [Section 69 of the old National Internal Revenue Code], the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, under Section 76 of the 1997 NIRC, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."

Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized

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[13] *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230 (2010) [Per *J.* Carpio, Second Division].

excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[14]

Section 76 is clear and categorical that once the carry-over option is chosen, it shall be considered *irrevocable* for the whole amount of the excess income tax and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[15] It has been held that "the irrevocable rule was evidently added to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards the taxpayer's excess tax credit."[16]

In *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[17] this court ruled that a corporation must signify in its ITR/FAR (by marking the option box provided in the Bureau of Internal Revenue form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. Item 31 of the income tax return (BIR Form No. 1702) indicates that "if overpayment, mark one box only: (once the choice is made, the same is irrevocable)."[18]

Accordingly, when a taxpayer has marked the carry-over option box in its ITR/FAR, it is not entitled to a refund even though

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[14] *Id.* at 237.

[15] *United International Pictures AB v. Commissioner of Internal Revenue,* G.R. No. 168331, October 11, 2012, 684 SCRA 23 [Per *J.* Peralta, Third Division]; *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.,* 662 Phil. 431 (2011) [Per *J.* Bersamin, Third Division]; *Belle Corporation v. Commissioner of Internal Revenue*, 654 Phil. 102 (2011) [Per *J.* Del Castillo, First Division]; *Commissioner of Internal Revenue v. The Philippine American Life and General Insurance Co*., 646 Phil. 161 (2010) [Per *J.* Carpio, Second Division]; *Systra Philippines, Inc. v. Commissioner of Internal Reven*ue, 560 Phil. 261 (2007) [Per *J.* Corona, First Division].

[16] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 609 Phil. 678 (2009) [Per *J.* Chico-Nazario, Third Division].

[17] 361 Phil. 916 (1999) [Per *J.* Quisumbing, Second Division].

[18] *Id*.

the excess tax credit was not utilized.[19] The question of whether the taxpayer was able to actually apply the tax credit is irrelevant. In such case, since the taxpayer is automatically barred from claiming a refund of the overpayment, there is no need to look at the ITR/FAR or the quarterly returns for the succeeding year.

However, while a taxpayer is required to mark its choice (i.e., carry over, refund, or issuance of tax credit) in the ITR/FAR, this requirement is only for the proper management of claims for refund or tax credit.[20] Hence, failure to signify one's intention in the ITR/FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on.[21]

It may also happen that a taxpayer may have marked the refund box in its return but nevertheless may have actually applied its excess tax payments to the taxable quarters of the succeeding taxable year by filling out the portion "prior year's excess credits" in any of its first, second, or third quarterly income tax returns.[22] In such case, the taxpayer is deemed to have effectively negated its previous intention to claim for a

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[19] *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230, 235 (2010) [Per *J.* Carpio, Second Division].

[20] *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.,* 648 Phil. 413 (2010) [Per *J.* Carpio, Second Division].

[21] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,* 514 Phil. 147 (2005) [Per *J.* Panganiban, Third Division]; *Paseo Realty & Development Corporation v. Court of Appeals,* 483 Phil. 254 (2004) [Per *J.* Tinga, Second Division].

[22] In G.R. No. 162004 of *Philam*, this court held that the fact that taxpayer filled out the portion "Prior Year's Excess Credits" in its subsequent final adjustment return shows that it has effectively chosen the carry-over option. This court noted that the line that preceded the phrase in the Bureau of Internal Revenue form clearly stated "Less: Tax Credits/Payments." It further stated that if an application for a tax refund has been or will be filed, that portion of the Bureau of Internal Revenue form should necessarily be blank, even if the final adjustment return of the previous taxable year already shows an overpayment in taxes.

refund. Consequently, since it had effectively opted to carry over its overpayments, the taxpayer can no longer revert back to its original choice.

Therefore, in both cases — when the taxpayer failed to mark its chosen option or when it marked the refund option — the examination of the quarterly income tax returns and the ITR/FAR of the subsequent taxable year becomes significant, in order to determine the taxpayer's compliance with the explicit and categorical requirement under Section 76, i.e., that it did not actually carry over its excess tax credit to the succeeding quarters of the succeeding taxable year.

True, petitioner's 2004 income tax return shows that it did not carry over its claimed unutilized creditable withholding taxes to the succeeding taxable year 2004 because the item "prior year's excess credits" was left blank. However, this is not enough to conclude that petitioner did not apply the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. The 2004 quarterly returns would have shown if petitioner effectively opted to carry over the 2003 excess or unutilized creditable withholding taxes to the subsequent taxable year. If petitioner applied the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 excess or unutilized creditable withholding taxes to the succeeding year 2004. Thus, its claim for refund should be denied.

Indeed, Section 75 of the National Internal Revenue Code requires corporate taxpayers to file quarterly income tax returns showing "a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax shall be paid." Section 76 allows excess tax payments to be applied against estimated quarterly tax liabilities. Therefore, the earliest opportunity when taxpayers may carry over and apply their previous year's excess tax payments would be the first quarter of the succeeding year.

It is granted that the taxes computed in the quarterly returns are mere estimates such that Section 76 requires the filing of the final adjustment return covering the total taxable income for the whole year. Section 232 of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding ₱150,000.00 be audited and examined yearly by an independent Certified Public Accountant and their income tax return be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom, and other related statements. Hence, the figures of gross receipts and deductions in the quarterly income tax returns are subject to audit and adjustment by the end of the year in the final adjustment return.[23]

This means that a taxpayer may realize a net income in the first quarter but incur an estimated loss in the succeeding quarters resulting in a net loss by the end of the year.[24] It may happen then that the previous year's overpayments, which a taxpayer seeks to be refunded by the end of the year, was actually carried over and included as "prior years' excess credits" in the first quarter of the succeeding year. As such, the refund claim by the end of the year cannot prosper because having exercised the carry-over option in the first quarter, the taxpayer is bound by the irrevocable rule. This is the significance of requiring the presentation of the quarterly returns in addition to the ITR/FAR of the succeeding year.

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[23] Rep. Act No. 8424 (1997), An Act Amending the National Internal Revenue Code, as Amended, and for other Purposes.

[24] See *Commissioner of Internal Revenue v. TMX Sales, Inc.,* G.R. No. 83736, January 15, 1992; 205 SCRA 184 [Per *J.* Gutierez, Jr., En Banc]. That case involved a claim for refund of overpaid income taxes. TMX Sales, Inc. filed its quarterly income tax return for the first quarter of 1981, declaring an income of ₱571,174.31 and consequently paying an income tax thereon of ₱247,010.00 on May 15, 1981. During the subsequent quarters, however, TMX Sales, Inc. suffered losses so that when it filed on April 15, 1982 its annual income tax return for the year ended December 31, 1981, it declared a gross income of ₱904.122.00 and total deductions of ₱7,060,647.00, or a net loss of ₱6,156,525.00. TMX Sales, Inc. sought to refund the amount of ₱247,010.00 that it paid in the first quarter of 1981.

While a taxpayer is allowed to modify or amend its quarterly income tax returns or annual income tax return under Section 6 of the National Internal Revenue Code,[25] an exception would be the irrevocable rule under Section 76 such that a taxpayer which opted to carry over its previous year's overpayments in the succeeding first, second, or third quarterly returns can no longer change its previous intention to carry over.

To reiterate, the 2004 ITR/FAR alone is not sufficient proof that petitioner did not exercise the carry-over option in any of the quarters of 2004. The best evidence to prove that it did not exercise the carry-over option in any of the quarters would be the quarterly returns.

Thus, petitioner's failure to present sufficient evidence to justify its claim for refund is fatal to its cause. After all, it is axiomatic that a claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[26]

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[25] Rep. Act No. 8424 (1997), An Act Amending the National Internal Revenue Code, as Amended, and for other Purposes.

Section 6, *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.* -

(A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provide, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* **from That within three (3) years the date of such filing, the same may be modified, changed, or amended:** *Provided, futher,* That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer. (Emphasis supplied)

[26] *Far East Bank & Trust Co. v. Court of Appeals,* 513 Phil. 148 (2005) [Per *J.* Azcuna, First Division]; *Paseo Realty & Development Corporation v. Court of Appeals,* 483 Phil. 254 (2004) [Per *J.* Tinga, Second Division].

"The taxpayer is charged with the heavy burden of proving that [it] has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund."[27]

Even if the claim for refund was filed within the two-year prescriptive period, the fact of withholding of creditable taxes by the withholding agents was proven and the income upon which the withholding taxes were withheld was included as part of the gross income and was reflected in the preceding income tax return, nonetheless, the taxpayer should prove that the excess creditable withholding tax was not carried over to the taxable quarters of the succeeding taxable years. Hence, the taxpayer-claimant must necessarily present the quarterly income tax returns and final adjustment return of the succeeding taxable year. "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove."[28]

Parenthetically, it would be faster to process claims for refund if all the pieces of information necessary to verify the veracity of the taxpayer's claims were furnished by the taxpayer-claimant, including the quarterly returns and income tax return of the succeeding year than to have the Bureau of Internal Revenue search for these documents in its files. Given the limited manpower of the Bureau of Internal Revenue to investigate all returns and requests, expediency necessitates that evidentiary matters be within the control of the taxpayer claiming a refund. The Bureau's primary function of tax collection should not be unduly delayed or hampered by incidental matters. Requiring the taxpayer to submit sufficient evidence ensures a more prompt action on its claim for refund and promotes a more efficient outcome.

Efficiency is achieved when tasks, which necessarily entail costs, are allocated to those who could best bear them. A party

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[27] *Commissioner v. Team Sual Corporation,* G.R. No. 194105, February 5, 2014, 715 SCRA 748, 503 [Per *J.* Reyes, First Division], citing *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.,* 638 Phil. 334 (2010) [Per *J.* Brion. Third Division].

[28] *Commissioner of Internal Revenue v. Far East Bank & Trust Company,* 629 Phil.405, 406 (2010) [Per . Del Castillo, Second Division].

that could best bear the cost is not necessarily the one who could do the task with the least cost, but a party's opportunity costs[29] should also be taken into consideration. This concept is known as *comparative* advantage.[30] This is contrasted with *absolute* advantage,[31] which does not take into consideration the opportunity costs.

At first glance, it might seem that the Bureau of Internal Revenue is in a better position to assess if a taxpayer has already selected to carry over excess income tax payments. It could be said that the Bureau of Internal Revenue has the *absolute* advantage over gaining this information, considering that the returns are filed with it. However, the Bureau of Internal Revenue does not have *comparative* advantage over producing a single taxpayer's previous returns for purposes of tax refund. The Bureau of Internal Revenue manages millions of taxpayers' returns. Assessing if a taxpayer's claim for refund has not yet

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[29] PAUL A. SAMUELSON, *ECONOMICS 746* (18th ed., 2006).

Opportunity cost is defined as "the value of the next-best use (or opportunity) for an economic good, or the value of the sacrificed alternative."

[30] *Id*. at 296 and 733.

The law of comparative advantage was devised by economist David Ricardo in order to explain optimal production of goods for purposes of international trade. Comparative advantage is "when a nation should specialize in producing and exporting those commodities which it can produce at *relatively* lower cost..."

To illustrate the concept of comparative advantage, for example, there are two individuals who are good in doing laundry: Aling Nena and Manny Pacquiao. Manny Pacquiao is better at doing laundry than Aling Nena. He could wash three more loads of laundry in a day than Aling Nena. In this case, Manny Pacquiao has an *absolute* advantage over Aling Nena. However, Manny Pacquiao also happens to be an excellent boxer. If he chooses to do laundry, it means foregoing training hours and matches as a boxer. Hence, even if Manny Pacquiao is better at doing laundry, the costs he will bear in doing laundry, is much higher than Aling Nena. Hence, Aling Nena has a comparative advantage in doing laundry over Manny Pacquiao.

[31] *Id*. at 296 and 731.

David Ricardo considers a country that is able to have greater output per unit of input as a country with absolute advantage. However, it does not take into consideration the opportunity costs creating the output.

been subject to carry over will entail the opportunity cost of the other functions of the Bureau of Internal Revenue.

On the other hand, the taxpayer manages only its own taxes. The taxpayer is aware of whether it has selected the option to carry over or the option to refund in its adjusted returns. Requiring the taxpayer to present the adjusted returns does not entail substantial opportunity costs to it. Hence, the allocation of the burden of proof to the taxpayer is more efficient than requiring the Bureau of Internal Revenue to do the same task.

Indeed, why petitioner failed to present such a vital piece of evidence even during the trial phase of this case confounds this court. The delay in this case could altogether have been avoided had it presented its quarterly income tax returns for 2004. The "[non-production] of a document which courts almost invariably expect will be produced 'unavoidably throws a suspicion over the cause.'"[32] Negligence consisting of the unexplained failure to offer a material document should not be rewarded with undeserved leniency.

Finally, it must be emphasized that there would be no unjust enrichment to the government in the event of denial of the claim for refund under such circumstances because there would be no forfeiture of any amount favoring the government. The amount being claimed as a refund would remain in the account of petitioner creditable against its future income tax liabilities until fully utilized.[33]

ACCORDINGLY, I vote to **DENY** the Petition. The Decision dated March 22, 2013 of the Court of Tax Appeals En Banc should be **AFFIRMED.**

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[32] *Republic v. Sandiganbayan,* 325 Phil. 762, 810 (1996) [Per *J.* Francisco, Third Division].

[33] *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.,* 648 Phil. 413 (2010) [Per *J.* Carpio, Second Division]; *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230 (2010) [Per *J.* Carpio, Second Division]. *Systra Philippines, Inc. v. Commissioner of Internal Revenue,* 560 Phil. 261 (2007) [Per *J.* Corona, First Division]; *Commission of Internal Revenue v. Bank of the Philippine Islands,* 609 Phil. 678 (2009) [Per *J.* Chico-Nazario, Third Division].

FIRST DIVISION

[G.R. No. 209499. January 28, 2015]

MA. CHARITO C. GADIA, ERNESTO M. PEÑAS, GEMMABELLE B. REMO, LORENA S. QUESEA, MARIE JOY FRANCISCO, BEVERLY A. CABINGAS, IVEE U. BALINGIT, ROMA ANGELICA O. BORJA, MARIE JOAN RAMOS, KIM GUEVARRA, LYNN S. DE LOS SANTOS, CAREN C. ENCANTO, EIDEN BALDOVINO, JACQUELINE B. CASTRENCE, MA. ESTRELLA V. LAPUZ, JOSELITO L. LORD, RAYMOND G. SANTOS, ABIGAIL M. VILORIA, ROMMEL C. ACOSTA, FRANCIS JAN S. BAYLON, ERIC O. PADIERNOS, MA. LENELL P. AARON, CRISNELL P. AARON, and LAWRENCE CHRISTOPHER F. PAPA, *petitioners, vs.* **SYKES ASIA, INC./ CHUCK SYKES/ MIKE HINDS/ MICHAEL HENDERSON***, respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); IN LABOR DISPUTES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NLRC WHEN ITS FINDINGS AND CONCLUSIONS REACHED THEREBY ARE NOT SUPPORTED BY EVIDENCE; SUSTAINED.—** Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "in cases filed

before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

2. ID.; ID.; PROJECT-BASED EMPLOYEE; REQUISITES, EXPLAINED.— Article 294 of the Labor Code, as amended, distinguishes a project-based employee from a regular employee x x x In *Omni Hauling Services, Inc. v. Bon*, the Court extensively discussed how to determine whether an employee may be properly deemed project-based or regular x x x Verily, for an employee to be considered project-based, the employer must show compliance with two (2) requisites, namely that: (*a*) the employee was assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time they were engaged for such project. x x x As regards the second requisite, the CA correctly stressed that "[t]he law and jurisprudence dictate that 'the duration of the undertaking begins and ends at determined or determinable times'" while clarifying that "[t]he phrase 'determinable times' simply means capable of being determined or fixed."

APPEARANCES OF COUNSEL

Cristeta D. Tamayo for petitioners.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 29, 2013 and the Resolution[3] dated October

[1] *Rollo*, pp. 11-30.

[2] *Id*. at 47-58. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Marlene Gonzales Sison and Hakim S. Abdulwahid, concurring.

[3] *Id*. at 60-62.

3, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 120433, which annulled and set aside the Decision[4] dated November 15, 2010 and the Resolution[5] dated May 10, 2011 of the National Labor Relations Commission (NLRC), in NLRC LAC No. 07-001583-10, and reinstated the Decision[6] dated June 23, 2010 of the Labor Arbiter (LA), holding that herein petitioners Ma. Charito C. Gadia[7] (Gadia), Ernesto M. Peñas,[8] Gemmabelle B. Remo (Remo), Lorena S. Quesea (Quesea), Marie Joy Francisco, Beverly A. Cabingas, Ivee U. Balingit[9] (Balingit), Roma Angelica O. Borja, Marie Joan Ramos, Kim Guevarra, Lynn S. De Los Santos, Caren C. Encanto, Eiden Baldovino, Jacqueline B. Castrence (Castrence), Ma. Estrella V. Lapuz (Lapuz), Joselito L. Lord (Lord), Raymond G. Santos, Abigail M. Viloria (Viloria), Rommel C. Acosta[10] (Acosta), Francis Jan S. Baylon, Eric O. Padiernos, Ma. Lenell P. Aaron, Crisnell P. Aaron, and Lawrence Christopher F. Papa (petitioners) are project employees of respondent Sykes Asia, Inc. (Sykes Asia), and thus, were validly terminated from employment.

The Facts

Sykes Asia is a corporation engaged in Business Process Outsourcing (BPO) which provides support to its international clients from various sectors (*e.g.*, technology, telecommunications, retail services) by carrying on some of their operations, governed by service contracts that it enters with them.[11] On September 2, 2003,[12] Alltel Communications, Inc. (Alltel), a United States-

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[4] *Id*. at 108-B-125. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[5] *Id*. at 127-129.

[6] *Id*. at 416-425. Penned by Labor Arbiter Romelita N. Rioflorido.

[7] "Charito Cabrera" in some parts of the records.

[8] "Ernesto M. Penas" in some parts of the records.

[9] "Ivee Untalan" in some parts of the records.

[10] "Rommer C. Acosta" in some parts of the records.

[11] *Rollo*, p. 48.

[12] September 3, 2002 in some parts of the records.

based telecommunications firm, contracted Sykes Asia's services to accommodate the needs and demands of Alltel clients for its postpaid and prepaid services (Alltel Project). Thus, on different dates, Sykes Asia hired petitioners as customer service representatives, team leaders, and trainers for the Alltel Project.[13]

Services for the said project went on smoothly until Alltel sent two (2) letters to Sykes Asia dated August 7, 2009[14] and September 9, 2009[15] informing the latter that it was terminating all support services provided by Sykes Asia related to the Alltel Project. In view of this development, Sykes Asia sent each of the petitioners end-of-life notices,[16] informing them of their dismissal from employment due to the termination of the Alltel Project. Aggrieved, petitioners filed separate complaints[17] for illegal dismissal against respondents Sykes Asia, Chuck Sykes, the President and Chief Operating Officer of Sykes Enterprise, Inc., and Mike Hinds and Michael Henderson, the President and Operations Director, respectively, of Sykes Asia (respondents), praying for reinstatement, backwages, 13th month pay, service incentive leave pay, night shift differential, moral and exemplary damages, and attorney's fees. In their complaints, petitioners alleged that their dismissal from service was unjust as the same was effected without substantive and procedural due process.[18]

In their defense,[19] respondents averred that petitioners were not regular employees but merely project-based employees, and as such, the termination of the Alltel Project served as a valid ground for their dismissal.[20] In support of their position,

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[13] *Rollo*, pp. 48-49.

[14] *Id*. at 194.

[15] *Id*. at 195.

[16] See *id*. at 270-300.

[17] Not attached to the records of the case.

[18] *Id*. at 49.

[19] See Position Paper dated February 24, 2010; *id*. at 157-183.

[20] See *id*. at 169-173.

respondents noted that it was expressly indicated in petitioners' respective employment contracts that their positions are "project-based" and thus, "co-terminus to the project."[21] Respondents further maintained that they complied with the requirements of procedural due process in dismissing petitioners by furnishing each of them their notices of termination at least thirty (30) days prior to their respective dates of dismissal.[22]

The LA Ruling

In a Decision[23] dated June 23, 2010 the LA ruled in favor of respondents, and accordingly, dismissed petitioners' complaints for lack of merit.[24] It found that petitioners are merely project-based employees, as their respective employment contracts indubitably provided for the duration and term of their employment, as well as the specific project to which they were assigned, *i.e.*, the Alltel Project.[25] Hence, the LA concluded that the cessation of the Alltel Project naturally resulted in the termination of petitioners' employment in Sykes Asia.[26]

Dissatisfied, petitioners appealed[27] to the NLRC.

The NLRC Ruling

In a Decision[28] dated November 15, 2010, the NLRC modified the LA Decision, ruling that petitioners are regular employees but were validly terminated due to redundancy.[29] Accordingly, petitioners, except Viloria and Acosta whose complaints were

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[21] See Employment Contracts; *id*. at 196-259. See also *id*. at 171.

[22] *Id*. at 49 and 173-174.

[23] *Id*. at 416-425.

[24] *Id*. at 425.

[25] *Id*. at 420.

[26] *Id*. at 424.

[27] See Memorandum of Appeal dated July 12, 2010; *id*. at 426-437.

[28] *Id*. at 108-B-125.

[29] *Id*. at 122.

dismissed without prejudice for failure to prosecute,[30] were awarded their separation pay with interest of 12% per annum reckoned from the date of their actual dismissal until full payment, plus attorney's fees amounting to 10% of the total monetary award. In addition, the NLRC awarded nominal damages in the amount of ₱10,000.00 each to petitioners Gadia, Remo, Quesea, Balingit, Castrence, Lapuz, and Lord for respondents' failure to furnish them the required written notice of termination within the prescribed period.[31]

Contrary to the LA's finding, the NLRC found that petitioners could not be properly characterized as project-based employees, ratiocinating that while it was made known to petitioners that their employment would be co-terminus to the Alltel Project, it was neither determined nor made known to petitioners, at the time of hiring, when the said project would end, be terminated, or be completed.[32] In this relation, the NLRC concluded that inasmuch as petitioners had been engaged to perform activities which are necessary or desirable in respondents' usual business or trade of BPO, petitioners should be deemed regular employees of Sykes Asia.[33] This notwithstanding, and in view of the cessation of the Alltel Project, the NLRC found petitioners' employment with Sykes Asia to be redundant; hence, declared that they were legally dismissed from service and were only entitled to receive their respective separation pay.[34]

Respondents moved for reconsideration,[35] which was, however, denied in a Resolution[36] dated May 10, 2011. Unconvinced, Sykes Asia[37] elevated the case to the CA on *certiorari*.[38]

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[30] See *id*. at 114.

[31] *Id*. at 121 and 123-124.

[32] *Id*. at 116.

[33] See *id*. at 116-117.

[34] See *id*. at 121-122.

[35] See Motion for Reconsideration dated December 6, 2010; *id*. at 130-153.

[36] *Id*. at 127-129.

[37] Only Sykes Asia appealed to the CA.

[38] *Id*. at 63-104.

The CA Ruling

In a Decision[39] dated April 29, 2013, the CA annulled and set aside the ruling of the NLRC, and accordingly, reinstated that of the LA.[40] It held that a perusal of petitioners' respective employment contracts readily shows that they were hired exclusively for the Alltel Project and that it was specifically stated therein that their employment would be project-based.[41] The CA further held that petitioners' employment contracts need not state an actual date as to when their employment would end, opining that it is enough that such date is determinable.[42]

Petitioners moved for reconsideration,[43] which was, however, denied in a Resolution[44] dated October 3, 2013, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly granted respondents' petition for *certiorari*, thereby setting aside the NLRC's decision holding that petitioners were regular employees and reinstating the LA ruling that petitioners were merely project-based employees, and thus, validly dismissed from service.

The Court's Ruling

The petition is without merit.

At the outset, it must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion

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[39] *Id*. at 47-58.

[40] *Id*. at 57.

[41] *Id*. at 55.

[42] See *id*. at 56.

[43] See Motion for Reconsideration dated May 23, 2013; *id*. at 657-660.

[44] *Id*. at 60-62.

connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[45]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[46]

Tested against these considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition before it, since the NLRC gravely abused its discretion in ruling that petitioners were regular employees of Sykes Asia when the latter had established by substantial evidence that they were merely project-based.

Article 294[47] of the Labor Code,[48] as amended, distinguishes a project-based employee from a regular employee as follows:

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[45] See *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014; citation omitted.

[46] *Id*.

[47] Formerly Article 280. As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" (July 26, 2010).

[48] Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (May 1, 1974).

Art. 294. *Regular and casual employment.*—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

x x x x x x x x x (Emphasis and underscoring supplied)

In *Omni Hauling Services, Inc. v. Bon*,[49] the Court extensively discussed how to determine whether an employee may be properly deemed project-based or regular, to wit:

A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, **the services of employees who are hired as "project[-based] employees" may be lawfully terminated at the completion of the project**.

According to jurisprudence, **the principal test for determining whether particular employees are properly characterised as "project[-based] employees" as distinguished from "regular employees," is whether or not the employees were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time they were engaged for that project**. The project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. In order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining a regular status, employers claiming that their workers are project[-based] employees should not only prove that the duration and scope of the

[49] *Supra* note 45.

employment was specified at the time they were engaged, but also, that there was indeed a project.[50] (Emphases and underscoring supplied)

Verily, for an employee to be considered project-based, the employer must show compliance with two (2) requisites, namely that: (*a*) the employee was assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time they were engaged for such project.

In this case, records reveal that Sykes Asia adequately informed petitioners of their employment status at the time of their engagement, as evidenced by the latter's employment contracts which similarly provide that they were hired in connection with the Alltel Project, and that their positions were "project-based and as such is co-terminus to the project." In this light, the CA correctly ruled that petitioners were indeed project-based employees, considering that: (*a*) they were hired to carry out a specific undertaking, *i.e.*, the Alltel Project; and (*b*) the duration and scope of such project were made known to them at the time of their engagement, *i.e.*, "co-terminus with the project."

As regards the second requisite, the CA correctly stressed that "[t]he law and jurisprudence dictate that 'the duration of the undertaking begins and ends at determined or determinable times'" while clarifying that "[t]he phrase 'determinable times' simply means capable of being determined or fixed."[51] In this case, Sykes Asia substantially complied with this requisite when it expressly indicated in petitioners' employment contracts that their positions were "co-terminus with the project." To the mind of the Court, this caveat sufficiently apprised petitioners that their security of tenure with Sykes Asia would only last as long as the Alltel Project was subsisting. In other words, when the Alltel Project was terminated, petitioners no longer had any project to work on, and hence, Sykes Asia may validly terminate them from employment.

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[50] *Id.*; citations omitted.

[51] *Rollo*, p. 56.

Further, the Court likewise notes the fact that Sykes Asia duly submitted an Establishment Employment Report[52] and an Establishment Termination Report[53] to the Department of Labor and Employment Makati-Pasay Field Office regarding the cessation of the Alltel Project and the list of employees that would be affected by such cessation. As correctly pointed out by the CA, case law deems such submission as an indication that the employment was indeed project-based.[54]

In sum, respondents have shown by substantial evidence that petitioners were merely project-based employees, and as such, their services were lawfully terminated upon the cessation of the Alltel Project.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated April 29, 2013 and the Resolution dated October 3, 2013 of the Court of Appeals in CA-G.R. SP No. 120433 are hereby **AFFIRMED**.

SO ORDERED.

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

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[52] *Id*. at 260-269.

[53] *Id*. at 301-307.

[54] See *Goma v. Pamplona Plantation Incorporated*, 579 Phil. 402, 413 (2008); *Filsystems, Inc. v. Puente*, 493 Phil. 923, 932 (2005); *Association of Trade Unions v. Hon. Abella*, 380 Phil. 6, 20 (2000).

FIRST DIVISION

[G.R. No. 171672. February 2, 2015]

MARRIETA DE CASTRO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; COMPLEX CRIMES; *ESTAFA* THROUGH FALSIFICATION OF A COMMERCIAL DOCUMENT; FOUR COUNTS OF *ESTAFA*, ESTABLISHED.—** The guilt of the petitioner for four counts of *estafa* through falsification of a commercial document was established beyond reasonable doubt. As a bank teller, she took advantage of the bank depositors who had trusted in her enough to leave their passbooks with her upon her instruction. Without their knowledge, however, she filled out withdrawal slips that she signed, and misrepresented to her fellow bank employees that the signatures had been verified in due course. Her misrepresentation to her co-employees enabled her to receive the amounts stated in the withdrawal slips. She thereby committed two crimes, namely: *estafa*, by defrauding BPI Family Savings, her employer, in the various sums withdrawn from the bank accounts of Matuguina and Cornejo; and falsification of a commercial document, by forging the signatures of Matuguina and Cornejo in the withdrawal slips to make it appear that the depositor concerned had signed the respective slips in order to enable her to withdraw the amounts. Such offenses were complex crimes, because the *estafa* would not have been consummated without the falsification of the withdrawal slips.
2. **ID.; ID.; ID.; ID.; IMPOSABLE PENALTIES FOR FOUR COUNTS OF *ESTAFA* THROUGH FALSIFICATION OF COMMERCIAL DOCUMENTS, CLARIFIED.—** [T]here is a need to clarify the penalties imposable. According to Article 48 of the *Revised Penal Code*, the penalty for a complex crime is that corresponding to the most serious crime, the same to be applied in its maximum period. Otherwise, the penalty will be void and ineffectual, and will not attain finality. In the four criminal cases involved in this appeal, the falsification

of commercial documents is punished with *prision correccional* in its medium and maximum periods (*i.e.*, **two years, four months and one day to six years**) and a fine of ₱5,000.00. In contrast, the *estafa* is punished according to the value of the defraudation, as follows: with the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period (*i.e.*, four years, two months and one day to eight years) if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, and if such amount exceeds ₱22,000.00, the penalty is imposed in the maximum period, adding one year for each additional ₱10,000.00, but the total shall not exceed 20 years, in which case the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be, in connection with the accessory penalties that may be imposed and for the purpose of the other provisions of the *Revised Penal Code*; with the penalty of *prision correccional* in its minimum and medium periods (*i.e.*, six months and one day to four years and two months) if the amount of the fraud is over ₱6,000.00 but does not exceed ₱12,000.00; with the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four months and one day to two years and four months) if the amount of the fraud is over ₱200.00 but does not exceed ₱6,000.00; and with the penalty of *arresto mayor* in its medium and maximum periods (*i.e.*, two months and one day to six months) if the amount of the fraud does not exceed ₱200.00. In Criminal Case No. 94-5524, *estafa* was the graver felony because the amount of the fraud was ₱20,000.00; hence, the penalty for *estafa* is to be imposed **in its maximum period**. However, the RTC and the CA fixed the indeterminate sentence of two years, 11 months and 10 days of *prison correccional*, as minimum, to six years, eight months and 20 days of *prision mayor*, as maximum. Such maximum of the indeterminate penalty was short by one day, **the maximum period of the penalty being six years, eight months and 21 days to eight years**. Thus, the indeterminate sentence is corrected to **three years of *prison correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum.** In Criminal Case No. 94-5525, involving ₱2,000.00, the *estafa* is punished with four months and one day of *arresto mayor* in its maximum period to two years and four months of *prision correccional* in its minimum period. The falsification of commercial document is penalized

with *prision correccional* in its medium and maximum periods (*i.e.*, two years, four months and one day to six years) and a fine of ₱5,000.00. The latter offense is the graver felony, and its penalty is to be imposed in the maximum period, which is from **four years, nine months and 11 days to six years plus fine of ₱5,000.00**. The penalty next lower in degree is *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four months and one day to two years and four months). Thus, the indeterminate sentence of three months of *arresto mayor*, as minimum, to one year and eight months of *prision correccional*, as maximum that both the RTC and the CA fixed was erroneous. We rectify the error by prescribing in lieu thereof the indeterminate sentence of two years of *prision correccional*, as minimum, to **four years, nine months and 11 days of *prision correccional* plus fine of ₱5,000.00, as maximum.** In Criminal Case No. 94-5526, involving ₱10,000.00, the RTC and the CA imposed the indeterminate sentence of four months and 20 days of *arresto mayor*, as minimum, to two years, 11 months and 10 days of *prision correccional*, as maximum. However, the penalty for the falsification of commercial documents is higher than that for the *estafa*. To accord with Article 48 of the *Revised Penal Code*, the penalty for falsification of commercial documents (*i.e.*, *prision correccional* in its medium and maximum periods and a fine of ₱5,000.00) should be imposed in the maximum period. Accordingly, we revise the indeterminate sentence so that its **minimum** is **two years and four months of *prision correccional*,** and its **maximum** is **five years of *prision correccional* plus fine of ₱5,000.00.** In Criminal Case No. 94-5527, where the amount of the fraud was ₱35,000.00, the penalty for *estafa* (*i.e.*, *prision correccional* in its maximum period to *prision mayor* in its minimum period, or four years, two months and one day to eight years) is higher than that for falsification of commercial documents. The indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum, was prescribed. Considering that the maximum period ranged from six years, eight months and 21 days to eight years, the CA should have clarified whether or not the maximum of eight years of *prision mayor* already included the incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00. Absent the clarification, we can presume that the

incremental penalty was not yet included. Thus, in order to make the penalty clear and specific, the indeterminate sentence is hereby fixed at four years of *prision correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum, plus one year incremental penalty. In other words, the maximum of the indeterminate sentence is **seven years, eight months and 21 days of *prision mayor***.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The court should prescribe the correct penalties in complex crimes in strict observance of Article 48 of the *Revised Penal Code*. In *estafa* through falsification of commercial documents, the court should impose the penalty for the graver offense in the maximum period. Otherwise, the penalty prescribed is invalid, and will not attain finality.

Antecedents

The petitioner, a bank teller of the BPI Family Savings Bank (BPI Family) at its branch in Malibay, Pasay City, appeals the affirmance of her conviction for four counts of *estafa* through falsification of a commercial document committed on separate occasions in October and November 1993 by forging the signatures of bank depositors Amparo Matuguina and Milagrosa Cornejo in withdrawal slips, thereby enabling herself to withdraw a total of ₱65,000.00 and ₱2,000.00 from the respective savings accounts of Matuguina and Cornejo.

The antecedent facts were summarized in the assailed decision of the Court of Appeals (CA),[1] as follows:

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[1] *Rollo*, 107-10.

As culled from the evidence, Matuguina and Cornejo left their savings account passbooks with the accused within the space of a week in October – November 1993 when they went to the bank's Malibay branch to transact on their accounts. Matuguina, in particular, withdrew the sum of ₱500 on October 29 and left her passbook with the accused upon the latter's instruction. She had to return two more times before the branch manager Cynthia Zialcita sensed that something wrong was going on. Learning of Matuguina's problem, Zialcita told the accused to return the passbook to her on November 8. On this day, the accused came up with the convenient excuse that she had already returned the passbook. Skeptical, Zialcita reviewed Matuguina's account and found three withdrawal slips dated October 19, 29 and November 4, 1993 containing signatures radically different from the specimen signatures of the depositor and covering a total of ₱65,000. It was apparent that the accused had intervened in the posting and verification of the slips because her initials were affixed thereto. Zialcita instructed her assistant manager Benjamin Misa to pay a visit to Matuguina, a move that led to the immediate exposure of the accused. Matuguina was aghast to see the signatures in the slips and denied that the accused returned the passbook to her. When she went back to the bank worried about the unauthorized withdrawals from her account, she met with the accused in the presence of the bank manager. She insisted that the signatures in the slips were not her, forcing the accused to admit that the passbook was still with her and kept in her house.

Zialcita also summoned Juanita Ebora, the teller who posted and released the November 4 withdrawal. When she was asked why she processed the transaction, Ebora readily pointed to the accused as the person who gave to her the slip. Since she saw the accused's initials on it attesting to having verified the signature of the depositor, she presumed that the withdrawal was genuine. She posted and released the money to the accused.

On the same day, November 8, Zialcita instructed Misa to visit another depositor, Milagrosa Cornejo, whom they feared was also victimized by the accused. Their worst expectations were confirmed. According to Cornejo, on November 3, she went to the bank to deposit a check and because there were many people there at the time, she left her passbook with the accused. She returned days later to get it back, but the accused told her that she left it at home. Misa now showed to her a withdrawal slip dated November 4, 1993 in which a signature purporting to be hers appeared. Cornejo denied that it

was her signature. As with the slips affecting Matuguina, the initials of the accused were unquestionably affixed to the paper.

Zialcita reported her findings posthaste to her superiors. The accused initially denied the claims against her but when she was asked to write her statement down, she confessed to her guilt. She started crying and locked herself inside the bathroom. She came out only when another superior Fed Cortez arrived to ask her some questions. Since then, she executed three more statements in response to the investigation conducted by the bank's internal auditors. She also gave a list of the depositors' accounts from which she drew cash and which were listed methodically in her diary.

The employment of the accused was ultimately terminated. The bank paid Matuguina ₱65,000, while Cornejo got her refund directly from the accused. In the course of her testimony on the witness stand, the accused made these further admissions:

(a) She signed the withdrawal slips Exhibits B, C, D and H which contained the fake signatures of Matuguina and Cornejo;

(b) She wrote and signed the confession letter Exhibit K;

(c) She wrote the answers to the questions of the branch cluster head Fred Cortez Exhibit L, and to the auditors' questions in Exhibit M, N and O;

(d) Despite demand, she did not pay the bank.[2]

Judgment of the RTC

On July 13, 1998, the Regional Trial Court in Pasay City (RTC) rendered its judgment,[3] finding the petitioner guilty as charged, and sentencing her to suffer as follows:

(*a*) In Criminal Case No. 94-5524, involving the withdrawal of ₱20,000.00 from the account of Matuguina, the indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to six years, eight months and 20 days of *prision mayor*, as maximum, and to pay BPI Family ₱20,000.00 and the costs of suit;

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[2] *Rollo,* pp. 107-110.

[3] *Id.* at 60-69.

(*b*) In Criminal Case No. 94-5525, involving the withdrawal of ₱2,000.00 from Cornejo's account, the indeterminate sentence of three months of *arresto mayor*, as minimum, to one year and eight months of *prision correccional*, as maximum, and to pay BPI Family ₱2,000.00 and the costs of suit;

(*c*) In Criminal Case No. 94-5526, involving the withdrawal of ₱10,000.00 from the account of Matuguina, the indeterminate sentence of four months and 20 days of *arresto mayor*, as minimum, to two years, 11 months and 10 days of *prision correccional*, as maximum, and to pay BPI Family ₱10,000.00 and the costs of suit; and

(d) In Criminal Case No. 94-5527, involving the withdrawal of ₱35,000 from Matuguina's account, the indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum, and to pay BPI Family ₱35,000.00 and the costs of suit.

Decision of the CA

On appeal, the petitioner contended in the CA that: (1) her conviction should be set aside because the evidence presented against her had been obtained in violation of her constitutional right against self-incrimination; (2) her rights to due process and to counsel had been infringed; and (3) the evidence against her should be inadmissible for being obtained by illegal or unconstitutional means rendering the evidence as *the fruit of the poisonous tree*.

On August 18, 2005, the CA promulgated its decision[4] affirming the judgment of the RTC, to wit:

> In summary, we find no grounds to disturb the findings of the lower court, except the provision of the dispositive portion in case 94-5525 requiring the accused to pay BPI Family ₱2,000. This must be deleted because the accused had already paid the amount to the depositor.

[4] *Rollo*, pp. 106-114; penned by Associate Justice Mario L. Guariña III (retired), with the concurrence of Associate Justice Marina L. Buzon (retired) and Associate Justice Santiago Javier Ranada (retired).

IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED, with the modification that the award of ₱2,000 to the complainant in case 94-5525 be deleted.

SO ORDERED.

Issues

In this appeal, the petitioner still insists that her conviction was invalid because her constitutional rights against self-incrimination, to due process and to counsel were denied. In behalf of the State, the Office of the Solicitor General counters that she could invoke her rights to remain silent and to counsel only if she had been under custodial investigation, which she was not; and that the acts of her counsel whom she had herself engaged to represent her and whom she had the full authority to replace at any time were binding against her.

Ruling of the Court

The appeal lacks merit.

We first note that the petitioner has accepted the findings of fact about the transactions that gave rise to the accusations in court against her for four counts of *estafa* through falsification of a commercial document. She raised no challenges against such findings of fact here and in the CA, being content with limiting herself to the supposed denial of her rights to due process and to counsel, and to the inadmissibility of the evidence presented against her. In the CA, her main objection focused on the denial of her right against self-incrimination and to counsel, which denial resulted, according to her, in the invalidation of the evidence of her guilt.

Debunking the petitioner's challenges, the CA stressed that the rights against self-incrimination and to counsel guaranteed under the Constitution applied only during the custodial interrogation of a suspect. In her case, she was not subjected to any investigation by the police or other law enforcement agents. Instead, she underwent an administrative investigation as an employee of the BPI Family Savings Bank, the investigation

being conducted by her superiors. She was not coerced to give evidence against herself, or to admit to any crime, but she simply broke down bank when depositors Matuguina and Cornejo confronted her about her crimes. We quote with approval the relevant portions of the decision of the CA, *viz*:

> The accused comes to Us on appeal to nullify her conviction on the ground that the evidence presented against her was obtained in violation of her constitutional right against self-incrimination. She also contends that her rights to due process and counsel were infringed. Without referring to its name, she enlists one of the most famous metaphors of constitutional law to demonize and exclude what she believes were evidence obtained against her by illegal or unconstitutional means – evidence constituting *the fruit of the poisonous tree*. We hold, however, that in the particular setting in which she was investigated, the revered constitutional rights of an accused to counsel and against self-incrimination are not apposite.
>
> The reason is elementary. These cherished rights are peculiarly rights in the context of an official proceeding for the investigation and prosecution for crime. The right against self-incrimination, when applied to a criminal trial, is contained in this terse injunction – *no person shall be compelled to be a witness against himself*. In other words, he may not be required to take the witness stand. He can sit mute throughout the proceedings. His right to counsel is expressed in the same laconic style: he shall enjoy *the right to be heard by himself and counsel*. This means inversely that the criminal prosecution cannot proceed without having a counsel by his side. These are the traditional rights of the accused in a criminal case. They exist and may be invoked when he faces a formal indictment and trial for a criminal offense. But since Miranda vs Arizona 384 US 436, the law has come to recognize that an accused needs the same protections even before he is brought to trial. They arise at the very inception of the criminal process – when a person is taken into custody to answer to a criminal offense. For what a person says or does during custodial investigation will eventually be used as evidence against him at the trial and, more often than not, will be the lynchpin of his eventual conviction. His trial becomes a parody if he cannot enjoy from the start the right against self-incrimination and to counsel. This is the logic behind what we now call as the *Miranda doctrine*.

The US Supreme Court in *Miranda* spells out in precise words the occasion for the exercise of the new right and the protections that it calls for. The occasion is *when an individual is subjected to police interrogation while in custody at the station or otherwise deprived of his freedom in a significant way.* It is when custodial investigation is underway that the certain procedural safeguards takes over – *the person must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning.*

We must, therefore, be careful to note what the *Miranda* doctrine does not say. It was never intended to hamper the traditional law-enforcement function to investigate crime involving persons *not under restraint*. The general questioning of citizens in the fact-finding process, as the US Supreme Court recognizes, which is not preceded by any restraint on the freedom of the person investigated, is not affected by the holding, since the compelling atmosphere inherent in in-custody interrogation is not present.

The holding in *Miranda* is explicitly considered the source of a provision in our 1987 bill of rights that *any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel*, a provision identical in language and spirit to the earlier Section 20, Article IV of the 1973 Constitution. People vs. Caguioa 95 SCRA 2. As we can see, they speak of the companion rights of a person under investigation to remain silent and to counsel, to ensure which the *fruit of the poisonous tree* doctrine had also to be institutionalized by declaring that *any confession or admission obtained in violation of these rights is inadmissible.* But to what extent must the rights to remain silent and to counsel be enforced in an investigation for the commission of an offense? The answer has been settled by rulings of our Supreme Court in *Caguoia* and in the much later case of Navallo vs. Sandiganbayan 234 SCRA 175 incorporating *in toto* the Miranda doctrine into the above-cited provisions of our bill of rights. Thus, the right to remain silent and to counsel can be invoked only in the context in which the *Miranda* doctrine applies – when the official proceeding is conducted under the coercive atmosphere of a custodial interrogation. There are no cases extending them to a non-coercive setting. In *Navallo*, the Supreme Court said very clearly that the rights are invocable only

when the accused is under custodial investigation. A person undergoing a normal audit examination is not under custodial investigation and, hence, the audit examiner may not be considered the law enforcement officer contemplated by the rule.

By a fair analogy, the accused in the case before us may not be said to be under custodial investigation. She was not even being investigated by any police or law enforcement officer. She was under administrative investigation by her superiors in a private firm and in purely voluntary manner. She was not restrained of her freedom in any manner. She was free to stay or go. There was no evidence that she was forced or pressured to say anything. It was an act of conscience that compelled her to speak, a true mental and moral catharsis that religion and psychology recognize to have salutary effects on the soul. In this setting, the invocation of the right to remain silent or to counsel is simply irrelevant.

The accused makes a final argument against her conviction by contending that she did not get effective legal representation from her former counsel who was already old and feeble when the case was being heard. In fact, the records show, her counsel died during the pendency of the case, an octogenarian at that. One can truly make a case from one's lack of a competent and independent counsel, but we are not prepared to say that the accused was so poorly represented that it affected her fundamental right to due process. Except for the several postponements incurred by her counsel, there is really no showing that he committed any serious blunder during the trial. We have read the transcripts of the trial and failed to get this impression. The evidence against the accused was simply too overwhelming. We may take note that once, the trial court admonished the accused to replace her counsel due to his absences, but she did not. She must live by that.[5]

Considering that the foregoing explanation by the CA was justly supported by the records, and that her investigation as a bank employee by her employer did not come under the coverage of the Constitutionally-protected right against self-incrimination, right to counsel and right to due process, we find no reversible error committed by the CA in affirming the conviction of the petitioner by the RTC.

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

The guilt of the petitioner for four counts of *estafa* through falsification of a commercial document was established beyond reasonable doubt. As a bank teller, she took advantage of the bank depositors who had trusted in her enough to leave their passbooks with her upon her instruction. Without their knowledge, however, she filled out withdrawal slips that she signed, and misrepresented to her fellow bank employees that the signatures had been verified in due course. Her misrepresentation to her co-employees enabled her to receive the amounts stated in the withdrawal slips. She thereby committed two crimes, namely: *estafa*, by defrauding BPI Family Savings, her employer, in the various sums withdrawn from the bank accounts of Matuguina and Cornejo; and falsification of a commercial document, by forging the signatures of Matuguina and Cornejo in the withdrawal slips to make it appear that the depositor concerned had signed the respective slips in order to enable her to withdraw the amounts. Such offenses were complex crimes, because the *estafa* would not have been consummated without the falsification of the withdrawal slips.

Nonetheless, there is a need to clarify the penalties imposable.

According to Article 48 of the *Revised Penal Code*,[6] the penalty for a complex crime is that corresponding to the most serious crime, the same to be applied in its maximum period. Otherwise, the penalty will be void and ineffectual, and will not attain finality.

In the four criminal cases involved in this appeal, the falsification of commercial documents is punished with *prision correccional* in its medium and maximum periods (*i.e.*, **two years, four months and one day to six years**) and a fine of ₱5,000.00.[7] In contrast, the *estafa* is punished according to the value of the defraudation, as follows: with the penalty of *prision correccional*

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[6] Article 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[7] Art. 172, *Revised Penal Code*.

in its maximum period to *prision mayor* in its minimum period (*i.e.*, four years, two months and one day to eight years) if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00, and if such amount exceeds ₱22,000.00, the penalty is imposed in the maximum period, adding one year for each additional ₱10,000.00, but the total shall not exceed 20 years, in which case the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be, in connection with the accessory penalties that may be imposed and for the purpose of the other provisions of the *Revised Penal Code*; with the penalty of *prision correccional* in its minimum and medium periods (*i.e.*, six months and one day to four years and two months) if the amount of the fraud is over ₱6,000.00 but does not exceed ₱12,000.00; with the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four months and one day to two years and four months) if the amount of the fraud is over ₱200.00 but does not exceed ₱6,000.00; and with the penalty of *arresto mayor* in its medium and maximum periods (*i.e.*, two months and one day to six months) if the amount of the fraud does not exceed ₱200.00.[8]

In Criminal Case No. 94-5524, *estafa* was the graver felony because the amount of the fraud was ₱20,000.00; hence, the penalty for *estafa* is to be imposed **in its maximum period**. However, the RTC and the CA fixed the indeterminate sentence of two years, 11 months and 10 days of *prision correccional*, as minimum, to six years, eight months and 20 days of *prision mayor*, as maximum. Such maximum of the indeterminate penalty was short by one day, **the maximum period of the penalty being six years, eight months and 21 days to eight years**. Thus, the indeterminate sentence is corrected to **three years of *prision correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum.**

In Criminal Case No. 94-5525, involving ₱2,000.00, the *estafa* is punished with four months and one day of *arresto mayor* in

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[8] Art. 315, *Revised Penal Code*.

its maximum period to two years and four months of *prision correccional* in its minimum period. The falsification of commercial document is penalized with *prision correccional* in its medium and maximum periods (*i.e*., two years, four months and one day to six years) and a fine of ₱5,000.00. The latter offense is the graver felony, and its penalty is to be imposed in the maximum period, which is from **four years, nine months and 11 days to six years plus fine of ₱5,000.00**. The penalty next lower in degree is *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e*., four months and one day to two years and four months). Thus, the indeterminate sentence of three months of *arresto mayor*, as minimum, to one year and eight months of *prision correccional*, as maximum that both the RTC and the CA fixed was erroneous. We rectify the error by prescribing in lieu thereof the indeterminate sentence of two years of *prision correccional*, as minimum, to **four years, nine months and 11 days of *prision correccional* plus fine of ₱5,000.00, as maximum.**

In Criminal Case No. 94-5526, involving ₱10,000.00, the RTC and the CA imposed the indeterminate sentence of four months and 20 days of *arresto mayor*, as minimum, to two years, 11 months and 10 days of *prision correccional*, as maximum. However, the penalty for the falsification of commercial documents is higher than that for the *estafa*. To accord with Article 48 of the *Revised Penal Code*, the penalty for falsification of commercial documents (*i.e*., *prision correccional* in its medium and maximum periods and a fine of ₱5,000.00) should be imposed in the maximum period. Accordingly, we revise the indeterminate sentence so that its **minimum** is **two years and four months of *prision correccional***, and its **maximum** is **five years of *prision correccional* plus fine of ₱5,000.00.**

In Criminal Case No. 94-5527, where the amount of the fraud was ₱35,000.00, the penalty for *estafa* (*i.e*., *prision correccional* in its maximum period to *prision mayor* in its minimum period, or four years, two months and one day to eight years) is higher than that for falsification of commercial documents. The indeterminate sentence of two years, 11 months

and 10 days of *prision correccional*, as minimum, to eight years of *prision mayor*, as maximum, was prescribed. Considering that the maximum period ranged from six years, eight months and 21 days to eight years, the CA should have clarified whether or not the maximum of eight years of *prision mayor* already included the incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00. Absent the clarification, we can presume that the incremental penalty was not yet included. Thus, in order to make the penalty clear and specific, the indeterminate sentence is hereby fixed at four years of *prision correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum, plus one year incremental penalty. In other words, the maximum of the indeterminate sentence is **seven years, eight months and 21 days of *prision mayor***.

The CA deleted the order for the restitution of the ₱2,000.00 involved in Criminal Case No. 94-5525 on the ground that such amount had already been paid to the complainant, Milagrosa Cornejo. There being no issue as to this, the Court affirms the deletion.

The Court adds that the petitioner is liable to BPI Family for interest of 6% *per annum* on the remaining unpaid sums reckoned from the finality of this judgment. This liability for interest is only fair and just.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on August 18, 2005, subject to the following **MODIFICATIONS**, to wit:

(1) In Criminal Case No. 94-5524, the petitioner shall suffer the indeterminate penalty of three years of *prision correccional*, as minimum, to six years, eight months and 21 days of *prision mayor*, as maximum;

(2) In Criminal Case No. 94-5525, the petitioner shall suffer the indeterminate penalty of two years of *prision correccional*, as minimum, to four years, nine months and 11 days of *prision correccional* plus fine of ₱5,000.00, as maximum;

(3) In Criminal Case No. 94-5526, the petitioner shall suffer the indeterminate penalty of two years and four months of *prision correccional*, as the minimum, to five years of *prision correccional* plus fine of ₱5,000.00, as the maximum; and

(4) In Criminal Case No. 94-5527, the petitioner shall suffer the indeterminate penalty of four years of *prision correccional*, as minimum, to seven years, eight months and 21 days of *prision mayor*, as maximum.

The Court **ORDERS** the petitioner to pay to BPI Family Savings Bank interest of 6% *per annum* on the aggregate amount of ₱65,000.00 to be reckoned from the finality of this judgment until full payment.

The petitioner shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perez, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 176022. February 2, 2015]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CECILIA GRACE L. ROASA, married to GREG AMBROSE ROASA, as herein represented by her Attorneys-in-Fact, BERNARDO M. NICOLAS, JR. and ALVIN B. ACAYEN,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REQUISITES FOR ORIGINAL REGISTRATION OF TITLE BASED ON A

CLAIM OF EXCLUSIVE AND CONTINUOUS POSSESSION.— [A]n applicant for original registration of title based on a claim of exclusive and continuous possession or occupation must show the existence of the following: 1. Open, continuous, exclusive and notorious possession, by themselves or through their predecessors-in-interest, of land; 2. The land possessed or occupied must have been declared alienable and disposable agricultural land of public domain; 3. The possession or occupation was under a *bona fide* claim of ownership; 4. Possession dates back to June 12, 1945 or earlier.

2. ID.; ID.; ID.; PERIOD OF POSSESSION SHOULD INCLUDE THE PERIOD OF ADVERSE POSSESSION PRIOR TO THE DECLARATION THAT THE LAND IS ALIENABLE AND DISPOSABLE.— The Court's disquisition in the recent case of *AFP Retirement and Separation Benefits System (AFP-RSBS) v. Republic of the Philippines*, as it retraces the various rulings of this Court on the issue as to when an applicant's possession should be reckoned and the resulting prevailing doctrine, is instructive, to wit: x x x *Republic v. Naguit [409 Phil. 405]* involves the similar question. In that case, **this court clarified that Section 14(1) of the Property Registration Decree should be interpreted to include possession before the declaration of the land's alienability as long as at the time of the application for registration, the land has already been declared part of the alienable and disposable agricultural public lands.** This court also emphasized in that case the absurdity that would result in interpreting Section 14(1) as requiring that the alienability of public land should have already been established by June 12, 1945. x x x This Court clarified the role of the date, June 12, 1945, in computing the period of possession for purposes of registration in *Heirs of Mario Malabanan v. Republic of the Philippines [605 Phil. 244]*. In that case, this court declared that *Naguit* and not *Herbieto* should be followed. x x x Therefore, **what is important in computing the period of possession is that the land has already been declared alienable and disposable at the time of the application for registration. Upon satisfaction of this requirement, the computation of the period may include the period of adverse possession prior to the declaration that land is alienable and disposable**.

3. ID.; ID.; ID.; REQUIRED NATURE AND PERIOD OF ADVERSE POSSESSION, COMPLIED WITH IN CASE AT BAR.— Although adverse, open, continuous, and notorious possession in the concept of an owner is a conclusion of law to be determined by courts, it has more to do with a person's belief in good faith that he or she has just title to the property that he or she is occupying. It is unrelated to the declaration that land is alienable or disposable. A possessor or occupant of property may, therefore, be a possessor in the concept of an owner prior to the determination that the property is alienable and disposable agricultural land. Respondent's right to the original registration of title over the subject property is, therefore, dependent on the existence of (a) a declaration that the land is alienable and disposable at the time of the application for registration and (b) open and continuous possession in the concept of an owner through itself or through its predecessors-in-interest since June 12, 1945 or earlier. In the present case, there is no dispute that the subject lot has been declared alienable and disposable on March 15, 1982. This is more than eighteen (18) years before respondent's application for registration, which was filed on December 15, 2000. Moreover, the unchallenged testimonies of two of respondent's witnesses established that the latter and her predecessors-in-interest had been in adverse, open, continuous, and notorious possession in the concept of an owner even before June 12, 1945.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Mabanglo & Felicidario Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the annulment of the Decision[1] of the Court of Appeals (*CA*),

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring, Annex "A" to Petition, *rollo*, pp. 43-51.

dated December 13, 2006, in CA-G.R. CV No. 85515 which reversed and set aside the Decision of the Regional Trial Court (*RTC*) of Tagaytay City, Branch 18, in Land Registration Case No. TG-930.

The facts of the case are as follows:

The instant petition arose from an application for registration of title over a parcel of land filed by herein respondent, represented by her attorneys-in-fact, Bernardo M. Nicolas, Jr. and Alvin B. Acayen. The application was filed on December 15, 2000 with the RTC of Tagaytay City. The subject lot was denominated as Lot 2 of the consolidation/subdivision plan, Ccs-04-000501-D, being a portion of Lots 13592 and 2681, Cad-452-D, Silang Cadastre.

In her application, respondent alleged, among others, that she is the owner in fee simple of the subject lot, having acquired the same by purchase as evidenced by a Deed of Absolute Sale dated December 2, 1994; that the said property is an agricultural land planted with corn, palay, bananas, coconut and coffee by respondent's predecessors-in-interest; that respondent and her predecessors-in-interest had been in open, continuous, exclusive and uninterrupted possession and occupation of the land under *bona fide* claim of ownership since the 1930's and that they have declared the land for taxation purposes. The application, likewise, stated the names and addresses of the adjoining owners.

Subsequently, the Republic of the Philippines, through the Office of the Solicitor General (*OSG*), opposed the application contending that the muniments of title, such as tax declarations and tax payment receipts, did not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for nor of the alleged open, continuous, exclusive and notorious possession by respondent and her predecessors-in-interest as owners for the period required by law. The OSG also argued that the subject lot is a portion of the public domain belonging to the Republic of the Philippines which is not subject to private appropriation.

Thereafter, respondent presented three witnesses to prove her allegations. She, then, filed her formal offer of evidence. The Republic, on the other hand, did not present any evidence to support its opposition to respondent's application for registration.

On June 21, 2004, the RTC admitted all the exhibits of respondent and considered the case submitted for decision.

On December 8, 2004, the RTC rendered its Decision denying respondent's application. The trial court held:

x x x x x x x x x

Perusal of the records show that the subject land x x x is not classified as forest land prior to March 15, 1982; x x x.

It bears stressing at this point in time that before one can register his title over a parcel of land, the applicant must show that he, by himself or by his predecessors-in-interest, had been in notorious possession and occupation of the subject land under a "bona fide" claim of ownership since June 12, 1945 or earlier; and further, the land subject of application is alienable and disposable portion of the public domain. x x x

The evidence adduced by the applicant [herein respondent] particularly Exhibit "U" shows that the subject land applied for registration was declared as not part of the forest land of the government before March 15, 1982, or short of more or less seven (7) years of the required adverse possession of thirty (30) years.

x x x x x x x x x.[2]

Aggrieved by the RTC Decision, herein respondent filed an appeal with the CA.

On December 13, 2006, the CA rendered its assailed Decision disposing as follows:

WHEREFORE, premises considered, the December 8, 2004 Decision of the Regional Trial Court of Tagaytay City, Branch 18, in Land Registration Case No. TG-930, is hereby **REVERSED** and

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[2] *Id.* at 52-53.

SET ASIDE and a new one issued, **GRANTING** the application for confirmation of imperfect title. The Register of Deeds of Tagaytay City is hereby **DIRECTED** to issue Title in the name of applicant for Lot 2 of Consolidated Subdivision Plan CCs-04-000501-D, being a portion of Lot 13592 and 2681, Cad-452-D, Silang Cadastre, consisting of 1.5 hectares.

SO ORDERED.[3]

The CA held that:

x x x x x x x x x

Applicants for confirmation of imperfect title must, therefore, prove the following: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain; and (b) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

There are two parts to the requirements of the law. As to the first part, there is no doubt that the subject property, irregardless of the date, was already made alienable and disposable agricultural land.

As to the second requirement, there is a specific cut-off date of possession: June 12, 1945. The cut-off date of possession of June 12, 1945 only applies to the requirement of possession. It does not have any bearing as to when the land became alienable and disposable.

When the property was classified as alienable and disposable, specifically on March 15, 1982, does not have any bearing with the second requirement of possession so that despite the fact that the property became alienable and disposable only in 1982, the possession requirement since June 12, 1945 stands so that, as in this case at bench, when the possession was since 1930, which is before June 12, 1945, the requirement of possession has been met.

x x x x x x x x x[4]

Hence, the instant petition anchored on the sole ground, to wit:

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[3] *Id*. at 18. (Emphasis in the original)

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

FAILURE TO COMPLY WITH THE REQUIRED 30-YEAR ADVERSE POSSESSION SINCE THE SUBJECT LAND WAS DECLARED ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN ONLY ON MARCH 15, 1982 PER CENRO CERTIFICATION, AND THE APPLICATION WAS FILED ONLY ON DECEMBER 12, 2000. ANY PERIOD OF POSSESSION PRIOR TO THE DATE WHEN THE SUBJECT LAND WAS CLASSIFIED AS ALIENABLE AND DISPOSABLE IS INCONSEQUENTIAL AND SHOULD BE EXCLUDED FROM THE COMPUTATION OF THE 30-YEAR PERIOD OF POSSESSION.[5]

Section 14(1), Presidential Decree No. 1529 provides as follows:

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.

In the same manner, Section 48 of Commonwealth Act No. 141, otherwise known as *The Public Land Act*, as amended by Presidential Decree No. 1073, states:

Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious

[5] *Id.* at 32-33.

possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. Those 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.

Based on the above provisions, an applicant for original registration of title based on a claim of exclusive and continuous possession or occupation must show the existence of the following:

1. Open, continuous, exclusive and notorious possession, by themselves or through their predecessors-in-interest, of land;
2. The land possessed or occupied must have been declared alienable and disposable agricultural land of public domain;
3. The possession or occupation was under a *bona fide* claim of ownership;
4. Possession dates back to June 12, 1945 or earlier.[6]

In the instant case, petitioner's sole contention is that the possession of the subject lot by respondent and her predecessors-in-interest before the establishment of alienability of the said land, should be excluded in the computation of the period of possession for purposes of registration. Petitioner argues that respondent's possession of the disputed parcel of land, prior to its re-classification as alienable and disposable, cannot be credited as part of the required period of possession because the same cannot be considered adverse.

The Court does not agree.

The Court's disquisition in the recent case of *AFP Retirement and Separation Benefits System (AFP-RSBS) v. Republic of the Philippines*,[7] as it retraces the various rulings of this Court

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[6] *Republic v. Sese*, G.R. No. 185092, June 4, 2014; *Republic v. Zurbaran Realty and Development Corporation,* G.R. No. 164408, March 24, 2014.

[7] G.R. No. 180086, July 2, 2014.

on the issue as to when an applicant's possession should be reckoned and the resulting prevailing doctrine, is instructive, to wit:

x x x x x x x x x

Republic v. Naguit [409 Phil. 405] involves the similar question. In that case, **this court clarified that Section 14(1) of the Property Registration Decree should be interpreted to include possession before the declaration of the land's alienability as long as at the time of the application for registration, the land has already been declared part of the alienable and disposable agricultural public lands.** This court also emphasized in that case the absurdity that would result in interpreting Section 14(1) as requiring that the alienability of public land should have already been established by June 12, 1945. Thus, this court said in *Naguit*:

> Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.
>
> Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is

already an intention on the part of the State to abdicate its exclusive prerogative over the property.

However, in the later case of *Republic v. Herbieto [498 Phil. 227]* that was cited by respondent, this court ruled that the period of possession before the declaration that land is alienable and disposable cannot be included in the computation of the period of possession. This court said:

> Section 48(b), as amended, now requires adverse possession of the land since 12 June 1945 or earlier. In the present Petition, the Subject Lots became alienable and disposable only on 25 June 1963. Any period of possession prior to the date when the Subject Lots were classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession; such possession can never ripen into ownership and unless the land had been classified as alienable and disposable, the rules on confirmation of imperfect title shall not apply thereto. It is very apparent then that respondents could not have complied with the period of possession required by Section 48(b) of the Public Land Act, as amended, to acquire imperfect or incomplete title to the Subject Lots that may be judicially confirmed or legalized.

This Court clarified the role of the date, June 12, 1945, in computing the period of possession for purposes of registration in *Heirs of Mario Malabanan v. Republic of the Philippines [605 Phil. 244]*. In that case, this court declared that *Naguit* and not *Herbieto* should be followed. *Herbieto* "has [no] precedential value with respect to Section 14(1)." This court said:

> The Court declares that the correct interpretation of Section 14(1) is that which was adopted in *Naguit*. The contrary pronouncement in *Herbieto*, as pointed out in *Naguit*, absurdly limits the application of the provision to the point of virtual inutility since it would only cover lands actually declared alienable and disposable prior to 12 June 1945, even if the current possessor is able to establish open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership long before that date.
>
> Moreover, the *Naguit* interpretation allows more possessors under a *bona fide* claim of ownership to avail of judicial confirmation of their imperfect titles than what would be feasible under *Herbieto*. This balancing fact is significant,

especially considering our forthcoming discussion on the scope and reach of Section 14(2) of the Property Registration Decree.

Thus, neither *Herbieto* nor its principal discipular ruling Buenaventura has any precedental value with respect to Section 14(1). On the other hand, the ratio of *Naguit* is embedded in Section 14(1), since it precisely involved situation wherein the applicant had been in exclusive possession under a *bona fide* claim of ownership prior to 12 June 1945. The Court's interpretation of Section 14(1) therein was decisive to the resolution of the case. Any doubt as to which between *Naguit* or *Herbieto* provides the final word of the Court on Section 14(1) is now settled in favor of *Naguit*.

Moreover, in the resolution of the motions for reconsideration of this court's 2009 decision in *Heirs of Malabanan*, this Court explained that there was no other legislative intent that could be associated with the date, June 12, 1945, as written in our registration laws except that it qualifies the requisite period of possession and occupation. The law imposes no requirement that land should have been declared alienable and disposable agricultural land as early as June 12, 1945.

Therefore, **what is important in computing the period of possession is that the land has already been declared alienable and disposable at the time of the application for registration. Upon satisfaction of this requirement, the computation of the period may include the period of adverse possession prior to the declaration that land is alienable and disposable**.[8] (Emphasis supplied)

Although adverse, open, continuous, and notorious possession in the concept of an owner is a conclusion of law to be determined by courts, it has more to do with a person's belief in good faith that he or she has just title to the property that he or she is occupying.[9] It is unrelated to the declaration that land is alienable or disposable.[10] A possessor or occupant of property may,

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[8] *Id.*

[9] *AFT Retirement and Separation Benefits System (AFP-RSBS) v. Republic of the Philippines, supra* note 7.

[10] *Id.*

therefore, be a possessor in the concept of an owner prior to the determination that the property is alienable and disposable agricultural land.[11]

Respondent's right to the original registration of title over the subject property is, therefore, dependent on the existence of (a) a declaration that the land is alienable and disposable at the time of the application for registration and (b) open and continuous possession in the concept of an owner through itself or through its predecessors-in-interest since June 12, 1945 or earlier.[12]

In the present case, there is no dispute that the subject lot has been declared alienable and disposable on March 15, 1982. This is more than eighteen (18) years before respondent's application for registration, which was filed on December 15, 2000. Moreover, the unchallenged testimonies of two of respondent's witnesses established that the latter and her predecessors-in-interest had been in adverse, open, continuous, and notorious possession in the concept of an owner even before June 12, 1945.[13]

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals, dated December 13, 2006, in CA-G.R. CV No. 85515 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Reyes, and *Jardeleza, JJ.,* concur.

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[11] *Id.*

[12] *Heirs of Malabanan v. Republic of the Philippines*, G.R. No. 179987, September 3, 2013, 704 SCRA 561, 580.

[13] See TSN, January 17, 2002, pp. 3-14; TSN, September 15, 2003, pp. 3-9.

SECOND DIVISION

[G.R. No. 191060. February 2, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TOMAS DIMACUHA, JR., EDGAR ALLEN ALVAREZ, RODEL CABALLERO, LUIS EVANGELISTA, RICKY BARRIAO, LITO GUALTER, TESS GUALTER, BOGS EVANGELISTA, alias THEO, alias NONONG, alias JOHNY and JOHN DOES,** *accused,* **EDGAR ALLEN ALVAREZ and RODEL CABALLERO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS, ESTABLISHED IN CASE AT BAR.— The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide. These requisites have been established by the prosecution. The gunman himself who testified for the prosecution, George Vitan (Vitan), testified that his group "*Black Shark*" killed Agon. One of the responding policemen PO2 Arnold Abdon, for his part, testified that he went to the hospital where Agon was taken and the latter was already dead when he arrived. Further, the Medico-Legal Officer, Dr. Antonio S. Vertido, testified on the post-mortem examination he conducted upon Agon which showed that the latter sustained six gunshot wounds, two of which were fatal. The element therefore that a person was killed is obtaining in this case. That appellants killed Agon was established through the prosecution witnesses composed of Vitan and two other self-confessed former members of "*Black Shark*," Arnel Balocon and Romulo Gasta. Their testimonies pointed to appellants as among those who planned and executed the killing of Agon. x x x All the elements of the crime of murder being present in this case, the RTC and the CA thus correctly ruled in finding appellants guilty of the said crime.

2. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, APPRECIATED.—** The fatal shooting of Agon was attended by treachery, a qualifying circumstance listed under Article 248 and notably, alleged in the Information. For treachery to be properly appreciated, two conditions must be present: (1) at the time of the assault, the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, methods, or forms of attack employed by him. These conditions were present in the killing of Agon. The assault upon Agon was deliberate, swift and sudden, denying him the opportunity to protect or defend himself. He was unarmed and unaware of the plot of appellants to kill him. Moreover, the means, method or manner of execution of the attack was deliberately and consciously adopted by appellants, the same being in accordance with their group's plan to liquidate Agon.

3. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS, PRESENT.—** It must be noted as well that the evidence adduced by the prosecution is also sufficient to establish the presence of the aggravating circumstance of evident premeditation, which has the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act. Vitan testified that the plan to kill Agon was conceived a day before the victim was fatally shot. Appellants and their cohorts therefore, had adequate time to reflect on the consequences of their contemplated crime prior to its execution. The period of time when appellants planned to kill Agon and the time when they implemented such plan afforded them the opportunity for meditation and reflection on the consequences of the murder they committed.

4. **ID.; ID.; CONSPIRACY; WHERE CONSPIRACY WAS ESTABLISHED, EVIDENCE AS TO WHO DELIVERED THE FATAL BLOW IS DISPENSABLE.—** The lower courts' finding of conspiracy must also be sustained. There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly,

to commit the felony and forthwith decide to pursue it." Here, the evidence is sufficient to prove that appellants conspired to murder Agon. Vitan testified that on February 21, 2004, he, the accused and appellants agreed to murder Agon. In accordance with their plan, they proceeded the next day, February 22, 2004, to the cockpit arena, a place which they knew that Agon would be at on that particular day. Upon their arrival thereat, the members of the group which included appellants positioned themselves according to their plan and waited for Agon to leave. Later on, Caballero signaled Vitan and the other alleged gunman, accused Theo (Theo), that the target had left the arena and that his vehicle was already approaching their position. When Agon's vehicle came, Vitan and Theo fired at him. Vitan, Caballero, Alvarez, who acted as one of the back-ups, and the rest of the group then fled the scene of the crime. Clearly, there was unity of action and purpose among the members of "*Black Shark*," which include appellants in killing Agon. Conspiracy having been established, evidence as to who delivered the fatal blow is no longer indispensable. Hence, it is immaterial if Caballero's role was merely to signal the gunmen and Alvarez's, to act as back-up. Each of the offender is equally guilty of the criminal act since in conspiracy the act of one is the act of all.

5. **ID.; ID.; PROPER PENALTY WHERE MURDER WAS COMMITTED WITH TREACHERY AND EVIDENT PREMEDITATION.—** Going now to the imposable penalty, the crime of murder is punished by *reclusion perpetua* to death. The RTC and the CA were correct in ruling that the attendant circumstance of treachery qualified the killing to murder. However, with the aggravating circumstance of evident premeditation also found to be present, the greater penalty of death is the imposable penalty pursuant to Article 63 of the RPC. Nevertheless, in lieu of death penalty, the imposition upon appellants of the penalty of *reclusion perpetua* in this case is proper pursuant to Republic Act No. 9346. It must also be added that appellants are not eligible for parole.

6. **ID.; ID.; CIVIL LIABILITY.—** With respect to damages, the amounts of civil indemnity, moral damages and exemplary damages awarded by the CA must be increased to ₱100,000.00 each in line with prevailing jurisprudence. Moreover, temperate damages in the amount of ₱25,000.00 must also be awarded in view of the absence of evidence of burial and funeral expenses.

Lastly, interest of 6% *per annum* shall be imposed on all the awards of damages from the date of finality of this judgment until fully paid.

7. **REMEDIAL LAW; EVIDENCE; WHEN FAILURE OF THE WITNESSES TO TESTIFY ON THEIR SWORN STATEMENTS DOES NOT AFFECT THEIR CREDIBILITY AND RENDER THE SWORN STATEMENTS INADMISSIBLE.—** As to the alleged failure of the prosecution witnesses to testify on their sworn statements, suffice it to say that the failure of the prosecution witnesses to reiterate the contents of their sworn statements during trial does not affect their credibility and render the sworn statements useless and insignificant, as long as they are presented as evidence in open court. The sworn statements and the open court declarations must be evaluated and examined together to obtain a thorough determination of the merits of the case. The presentation of these sworn statements during the trial and the attestation of the prosecution witnesses thereto render the same admissible in evidence. Moreover, appellants' contention that they were denied the opportunity to cross-examine the prosecution witnesses on the contents of their *sinumpaang salaysay(s)* has no factual basis. The records reveal that they cross-examined the witnesses after the prosecution's direct examination.

8. **ID.; ID.; DEFENSES OF DENIAL AND ALIBI CANNOT BE GIVEN ANY WEIGHT WHEN NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.—** It must be noted that in the face of the glaring evidence against them, appellants could only muster the defenses of denial and alibi. As consistently ruled by the Court, denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused. Being negative defenses, they must be corroborated and substantiated by clear and convincing evidence; otherwise, they would merit no weight in law and cannot be given greater value in evidence than the testimony of credible witnesses who testified on affirmative matters. In this case, appellants failed to proffer corroborative evidence in spite of the opportunities provided to them. Hence, their self-serving testimonies of denial and alibi cannot prevail over Vitan's positive identification of them as perpetrators of

the crime. Indeed, their defenses do not deserve any weight in evidence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jose Amado Melgarejo for accused-appellants.

R E S O L U T I O N

DEL CASTILLO, *J*.:

Appellants Edgar Allen Alvarez (Alvarez) and Rodel Caballero (Caballero), together with the accused who remain at-large, were charged with the crime of murder[1] for the fatal shooting of Nicanor Morfe Agon (Agon).[2] During the arraignment, appellants entered separate pleas of not guilty.[3] After trial, the Regional Trial Court (RTC) of Batangas City, Branch 2, rendered a Decision[4] dated May 11, 2007 finding the appellants guilty beyond reasonable doubt of the crime charged, *viz*:

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[1] The accusatory portion of the Information reads as follows:

That on or about the 22nd day of February 2004, at Sta. Rita, Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, mutually helping each other and with conspiracy and with intent to kill, did then and there willfully, unlawfully and feloniously killed [sic] NICKANOR MORFE AGON in the following manner, to wit: They planned to kill Nickanor Morfe Agon as they followed him first from the cockpit, while his [P]ajero was about to turn, it slowed down and at that juncture, and taking advantage of superior strength armed with several guns, they fired at him for many times and on the different parts of his body thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW with qualifying and[/]or aggravating circumstances of evident premeditation, treachery, with aid of armed men, for consideration or reward and with use of motor vehicles. (Records, pp. 1-2)

[2] Sometimes spelled as Nickanor Morfe Agon and Nicanor Morpe Agon in the records.

[3] *Id*. at 106.

[4] *Id*. at 314-329; penned by Presiding Judge Maria Cecilia I. Austria.

WHEREFORE, in view of all the foregoing, accused EDGAR ALLEN ALVAREZ and RODEL CABALLERO, are hereby found guilty of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, with the qualifying and/or aggravating circumstance of treachery and evident premeditation and both accused are hereby sentenced to suffer the penalty of RECLUSION PERPETUA. They are further ordered to pay the heirs of Nicanor Agon y Morpe jointly and severally the amount of ₱100,000.00 as civil liability and to pay the costs.

Considering that accused Tomas Dimacuha, Jr., Luis Evangelista, Ricky Barriao, Alias Joey, Alias Theo, Alias Nonong, Alias Johny and John Does are still at large, let the charges against them be archived subject to revival upon their apprehension.

Let a copy of this decision be furnished the Secretary of Justice for his information of the procedural lapses in the selection of George Vitan as prosecution witness and for his appropriate action.

SO ORDERED.[5]

Aggrieved, appellants appealed to the Court of Appeals (CA). In a Decision[6] dated October 8, 2009, the CA affirmed with modifications the ruling of the RTC, *viz*:

WHEREFORE, the appeal is DENIED. The assailed decision is AFFIRMED insofar as the Accused-Appellants Edgar Allen Alvarez and Rodel Caballero are found guilty beyond reasonable doubt of Murder and are penalized with imprisonment of *reclusion perpetua*. However, the award of civil indemnity is REDUCED from One Hundred Thousand Pesos (Php100,000.00) to Fifty Thousand Pesos (Php50,000.00). In addition, the Accused-Appellants are ORDERED to pay, jointly and severally, the heirs of Nicanor Morfe Agon the amounts of Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages. Costs against the Accused-Appellants.

SO ORDERED.[7]

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[5] *Id.* at 328.

[6] CA *rollo*, pp. 170-195; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon R. Garcia.

[7] *Id.* at 194.

Hence, this appeal.

In a Resolution[8] dated August 16, 2010, the Court directed the parties to file their respective supplemental briefs, if they so desire. Both, however, opted to adopt the briefs they submitted before the CA as their supplemental briefs.[9]

Appellants insist that the evidence was insufficient to warrant their conviction. First, the witnesses for the prosecution did not testify on the material allegations stated in the complaint sheet and the sworn statements, thereby depriving them of the opportunity to cross-examine said witnesses. Second, there was no proof that Agon and the person referred to in the death certificate are one and the same. Third, the prosecution failed to present in court the murder weapons, as well as the slugs. Fourth, there was no testimony proffered on the caliber of the gun used in shooting Agon. And lastly, appellants maintain that they were denied due process when the RTC ordered the discontinuance of their presentation of additional witnesses.

The Court is not convinced.

The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.[10] These requisites have been established by the prosecution.

The gunman himself who testified for the prosecution, George Vitan (Vitan), testified that his group "*Black Shark*" killed Agon. One of the responding policemen PO2 Arnold Abdon, for his part, testified that he went to the hospital where Agon was taken and the latter was already dead when he arrived. Further, the Medico-Legal Officer, Dr. Antonio S. Vertido, testified on the post-mortem examination he conducted upon Agon which

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[8] *Rollo*, p. 38.

[9] *Id*. at 39-41 and 44-47.

[10] *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.

showed that the latter sustained six gunshot wounds, two of which were fatal. The element therefore that a person was killed is obtaining in this case.

That appellants killed Agon was established through the prosecution witnesses composed of Vitan and two other self-confessed former members of "*Black Shark*," Arnel Balocon and Romulo Gasta. Their testimonies pointed to appellants as among those who planned and executed the killing of Agon.

The fatal shooting of Agon was attended by treachery, a qualifying circumstance listed under Article 248 and notably, alleged in the Information. For treachery to be properly appreciated, two conditions must be present: (1) at the time of the assault, the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, methods, or forms of attack employed by him.[11] These conditions were present in the killing of Agon. The assault upon Agon was deliberate, swift and sudden, denying him the opportunity to protect or defend himself. He was unarmed and unaware of the plot of appellants to kill him. Moreover, the means, method or manner of execution of the attack was deliberately and consciously adopted by appellants, the same being in accordance with their group's plan to liquidate Agon. As aptly ruled by the RTC:

> The prosecution evidence show that herein accused, together with their group deliberately executed their aggression without any risk arising from their victim, who was caught unaware, helpless and defenseless. At the time the group commenced their aggression, Nick Agon was entirely unsuspecting, as he was on board his Mitsubishi Pajero traversing a narrow street leading to the highway. He (Agon) was surprised when Theo and George Vitan suddenly approached from the right side of his vehicle and promptly fired at him successively. This manner purposely adopted by the duo coupled with the help given by their comrades to ensure the commission of the crime clearly constitutes treachery; x x x.[12]

Finally, the killing of Agon was neither parricide nor infanticide.

[11] *Id*. at 524.

[12] Records, pp. 325-326.

All the elements of the crime of murder being present in this case, the RTC and the CA thus correctly ruled in finding appellants guilty of the said crime.

It must be noted as well that the evidence adduced by the prosecution is also sufficient to establish the presence of the aggravating circumstance of evident premeditation, which has the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[13] Vitan testified that the plan to kill Agon was conceived a day before the victim was fatally shot. Appellants and their cohorts therefore, had adequate time to reflect on the consequences of their contemplated crime prior to its execution. The period of time when appellants planned to kill Agon and the time when they implemented such plan afforded them the opportunity for meditation and reflection on the consequences of the murder they committed.

The lower courts' finding of conspiracy must also be sustained. There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it."[14] Here, the evidence is sufficient to prove that appellants conspired to murder Agon. Vitan testified that on February 21, 2004, he, the accused and appellants agreed to murder Agon. In accordance with their plan, they proceeded the next day, February 22, 2004, to the cockpit arena, a place which they knew that Agon would be at on that particular day. Upon their arrival thereat, the members of the group which included appellants positioned themselves according to their plan and waited for Agon to leave. Later on, Caballero signaled Vitan and the other alleged gunman, accused Theo (Theo), that the

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[13] *People v. Nimuan*, G.R. No. 182918, June 6, 2011, 650 SCRA 597, 604-605.

[14] *People v. Amodia*, 602 Phil. 889, 911-912 (2009).

target had left the arena and that his vehicle was already approaching their position. When Agon's vehicle came, Vitan and Theo fired at him. Vitan, Caballero, Alvarez, who acted as one of the back-ups, and the rest of the group then fled the scene of the crime. Clearly, there was unity of action and purpose among the members of "*Black Shark*," which include appellants in killing Agon.

Conspiracy having been established, evidence as to who delivered the fatal blow is no longer indispensable. Hence, it is immaterial if Caballero's role was merely to signal the gunmen and Alvarez's, to act as back-up. Each of the offender is equally guilty of the criminal act since in conspiracy the act of one is the act of all.[15]

Anent appellants' claim of denial of due process since their presentation of additional witnesses was disallowed by the RTC, the Court finds that the CA had already amply and correctly addressed this issue, thus:

> x x x We find that the RTC had every reason to discontinue the presentation of evidence by the Accused-Appellants. They sought postponements, to reiterate, not only once or twice, but on many instances. Considering that the RTC and its entire staff had to travel outside the province of Batangas, and the fact that the Accused-Appellants intended to present other witnesses, they should have therefore been more discerning in seeking the resetting of the trial proceedings to avoid unreasonable delay.
>
> As the RTC correctly held, the concept of speedy trial is available not only to the accused but also the State because, while an accused does have rights, let it not be forgotten that the aggrieved also have the same rights. Thus, the Accused-Appellants were not denied due process considering that they were able to testify on their own behalf and that it is within their power, which they miserably failed, to ensure that they are able to present their case without delay.[16]

In the same vein, appellants' other arguments, *i.e.*, that there was no testimony respecting the complaint sheet; that the murder

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[15] *People v. Agacer*, G.R. No. 177751, December 14, 2011, 662 SCRA 461, 472.

[16] CA *rollo*, pp. 183-184.

weapons and the slugs were not presented in evidence; and that the medico-legal officer who conducted the post-mortem examination on Agon did not testify on the identity and caliber of the firearms used in the killing, do not deserve credence. The non-presentation of such items and testimonies is not indispensable to the successful prosecution of the appellants since they are not elements of the crime of murder.[17]

As to the alleged failure of the prosecution witnesses to testify on their sworn statements, suffice it to say that the failure of the prosecution witnesses to reiterate the contents of their sworn statements during trial does not affect their credibility and render the sworn statements useless and insignificant, as long as they are presented as evidence in open court. The sworn statements and the open court declarations must be evaluated and examined together to obtain a thorough determination of the merits of the case. The presentation of these sworn statements during the trial and the attestation of the prosecution witnesses thereto render the same admissible in evidence. Moreover, appellants' contention that they were denied the opportunity to cross-examine the prosecution witnesses on the contents of their *sinumpaang salaysay(s)* has no factual basis. The records reveal that they cross-examined the witnesses after the prosecution's direct examination.

It must be noted that in the face of the glaring evidence against them, appellants could only muster the defenses of denial and alibi. As consistently ruled by the Court, denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused. Being negative defenses, they must be corroborated and substantiated by clear and convincing evidence; otherwise, they would merit no weight in law and cannot be given greater value in evidence than the testimony of credible witnesses who testified on affirmative matters.[18] In this case, appellants failed to proffer corroborative evidence in spite of the opportunities provided to them. Hence,

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[17] *People v. Nicolas*, 448 Phil. 253, 264-265 (2003).

[18] *People v. Dela Paz*, 569 Phil. 684, 700 (2008).

their self-serving testimonies of denial and alibi cannot prevail over Vitan's positive identification of them as perpetrators of the crime. Indeed, their defenses do not deserve any weight in evidence.

Going now to the imposable penalty, the crime of murder is punished by *reclusion perpetua* to death. The RTC and the CA were correct in ruling that the attendant circumstance of treachery qualified the killing to murder. However, with the aggravating circumstance of evident premeditation also found to be present, the greater penalty of death is the imposable penalty pursuant to Article 63[19] of the RPC. Nevertheless, in lieu of death penalty, the imposition upon appellants of the penalty of *reclusion perpetua* in this case is proper pursuant to Republic Act No. 9346.[20] It must also be added that appellants are not eligible for parole.[21]

With respect to damages, the amounts of civil indemnity, moral damages and exemplary damages awarded by the CA must be increased to ₱100,000.00 each in line with prevailing jurisprudence.[22] Moreover, temperate damages in the amount of ₱25,000.00 must also be awarded in view of the absence of evidence of burial and funeral expenses. Lastly, interest of 6% *per annum* shall be imposed on all the awards of damages from the date of finality of this judgment until fully paid.[23]

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[19] Article 63. *Rules for the application of indivisible penalties*. – x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x x x x x x

[20] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[21] *People v. Tolentino*, 570 Phil. 255, 284 (2008).

[22] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 535.

[23] *People v. Lagman*, *supra* note 10 at 529.

WHEREFORE, the October 8, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03048 affirming the conviction by the Regional Trial Court of Batangas City, Branch 2 of appellants Edgar Allen Alvarez and Rodel Caballero of the crime of murder for which they were sentenced to suffer the penalty of *reclusion perpetua,* is **AFFIRMED** with **MODIFICATIONS** that (1) appellants are not eligible for parole; (2) the awards of civil indemnity, moral damages and exemplary damages to the victim's heirs are each increased to ₱100,000.00; (3) appellants are further ordered to pay the victim's heirs temperate damages in the amount of ₱25,000.00; and, (4) 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), Velasco, Jr.,[*] *Mendoza,* and *Leonen, JJ.,* concur.

EN BANC

[A.C. No. 7973 and A.C. No. 10457. February 3, 2015]

MELVYN G. GARCIA, *complainant, vs.* **ATTY. RAUL H. SESBREÑO**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT BY REASON OF A CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE.— Section 27, Rule 138 of the Rules of Court states that a member of the bar may be disbarred or suspended as attorney by this Court by reason of his conviction of a crime

[*] Per Special Order No. 1910 dated January 12, 2015.

involving moral turpitude. This Court has ruled that disbarment is the appropriate penalty for conviction by final judgment for a crime involving moral turpitude. Moral turpitude is an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men or to society in general, contrary to justice, honesty, modesty, or good morals.

2. **ID.; ID.; ID.; CIRCUMSTANCES SHOWING THAT THE CONVICTION FOR HOMICIDE INVOLVED MORAL TURPITUDE.—** We reviewed the Decision of this Court and we agree with the IBP-CBD that the circumstances show the presence of moral turpitude. The Decision showed that the victim Luciano Amparado (Amparado) and his companion Christopher Yapchangco (Yapchangco) were walking and just passed by Sesbreño's house when the latter, without any provocation from the former, went out of his house, aimed his rifle, and started firing at them. According to Yapchangco, they were about five meters, more or less, from the gate of Sesbreño when they heard the screeching sound of the gate and when they turned around, they saw Sesbreño aiming his rifle at them. Yapchangco and Amparado ran away but Amparado was hit. An eyewitness, Rizaldy Rabanes (Rabanes), recalled that he heard shots and opened the window of his house. He saw Yapchangco and Amparado running away while Sesbreño was firing his firearm rapidly, hitting Rabanes' house in the process. Another witness, Edwin Parune, saw Amparado fall down after being shot, then saw Sesbreño in the middle of the street, carrying a long firearm, and walking back towards the gate of his house. The IBP-CBD correctly stated that Amparado and Yapchangco were just at the wrong place and time. They did not do anything that justified the indiscriminate firing done by Sesbreño that eventually led to the death of Amparado.

3. **ID.; ID.; ID.; WHERE A LAWYER WHO WAS GRANTED AN EXECUTIVE CLEMENCY STILL HAS NO PRIVILEGE TO PRACTICE HIS LEGAL PROFESSION.—** We cannot accept Sesbreño's argument that the executive clemency restored his full civil and political rights. x x x [T]he Order of Commutation did not state that the pardon was absolute and unconditional. The accessory penalties were not mentioned when the original sentence was recited in the Order of Commutation and they were also not mentioned in stating the commuted sentence. x x x There are four acts of executive clemency that the President

can extend: the President can grant reprieves, commutations, pardons, and remit fines and forfeitures, after conviction by final judgment. In this case, the executive clemency merely "**commuted to an indeterminate prison term of 7 years and 6 months to 10 years imprisonment**" the penalty imposed on Sesbreño. **Commutation is a mere reduction of penalty**. **Commutation only partially extinguished criminal liability**. The penalty for Sesbreño's crime was never wiped out. He served the commuted or reduced penalty, for which reason he was released from prison. More importantly, the Final Release and Discharge stated that "**[i]t is understood that such x x x accessory penalties of the law as have not been expressly remitted herein shall subsist**." Hence, the *Parcasio* case has no application here. Even if Sesbreño has been granted pardon, there is nothing in the records that shows that it was a full and unconditional pardon. In addition, the practice of law is not a right but a privilege. It is granted only to those possessing good moral character. A violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty against a lawyer, including the penalty of disbarment. **WHEREFORE**, respondent Raul H. Sesbreño is **DISBARRED** effective immediately upon his receipt of this Decision.

D E C I S I O N

***PER CURIAM*:**

Two complaints for disbarment were filed by Dr. Melvyn G. Garcia (Garcia) against Atty. Raul H. Sesbreño (Sesbreño). The two cases, docketed as A.C. No. 7973 and A.C. No. 10457, were consolidated in the Court's Resolution dated 30 September 2014.

<u>A.C. No. 7973</u>

On 30 July 2008, Garcia filed a complaint for disbarment against Sesbreño before the Office of the Bar Confidant. The case was docketed as A.C. No. 7973. Garcia alleged that in 1965, he married Virginia Alcantara in Cebu. They had two children, Maria Margarita and Angie Ruth. In 1971, he and

Virginia separated. He became a dentist and practiced his profession in Cabanatuan City. Garcia alleged that in 1992, Virginia filed a petition for the annulment of their marriage, which was eventually granted.

Garcia alleged that in 2005 while he was in Japan, Sesbreño, representing Maria Margarita and Angie Ruth, filed an action for support against him and his sister Milagros Garcia Soliman. At the time of the filing of the case, Maria Margarita was already 39 years old while Angie Ruth was 35 years old. The case was dismissed. In 2007, Garcia returned from Japan. When Sesbreño and Garcia's children learned about his return, Sesbreño filed a Second Amended Complaint against him. Garcia alleged that he learned that Sesbreño was convicted by the Regional Trial Court of Cebu City, Branch 18, for Homicide in Criminal Case No. CBU-31733. Garcia alleged that Sesbreño is only on parole. Garcia alleged that homicide is a crime against moral turpitude; and thus, Sesbreño should not be allowed to continue his practice of law.

In his Comment, Sesbreño alleged that on 15 August 2008, Garcia filed a similar complaint against him before the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD), docketed as CBC Case No. 08-2273. Sesbreño alleged that Garcia's complaint was motivated by resentment and desire for revenge because he acted as pro bono counsel for Maria Margarita and Angie Ruth.

In the Court's Resolution dated 18 January 2010, the Court referred A.C. No. 7973 to the IBP for investigation, report and recommendation.

A.C. No. 10457 (CBC Case No. 08-2273)

A day prior to the filing of A.C. No. 7973, or on 29 July 2008, Garcia filed a complaint for disbarment against Sesbreño before the IBP-CBD. He alleged that Sesbreño is practicing law despite his previous conviction for homicide in Criminal Case No. CBU-31733, and despite the facts that he is only on parole and that he has not fully served his sentence. Garcia

alleged that Sesbreño violated Section 27, Rule 138 of the Rules of Court by continuing to engage in the practice of law despite his conviction of a crime involving moral turpitude. Upon the directive of the IBP-CBD, Garcia submitted his verified complaint against Sesbreño alleging basically the same facts he alleged in A.C. No. 7973.

In his answer to the complaint, Sesbreño alleged that his sentence was commuted and the phrase "with the inherent accessory penalties provided by law" was deleted. Sesbreño argued that even if the accessory penalty was not deleted, the disqualification applies only during the term of the sentence. Sesbreño further alleged that homicide does not involve moral turpitude. Sesbreño claimed that Garcia's complaint was motivated by extreme malice, bad faith, and desire to retaliate against him for representing Garcia's daughters in court.

The IBP-CBD consolidated A.C. No. 7973 with CBD Case No. 08-2273. The parties agreed on the sole issue to be resolved: whether moral turpitude is involved in a conviction for homicide.

The IBP-CBD ruled that the Regional Trial Court of Cebu found Sesbreño guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. On appeal, this Court downgraded the crime to homicide and sentenced Sesbreño to suffer the penalty of imprisonment for 9 years and 1 day of *prision mayor* as minimum to 16 years and 4 months of *reclusion temporal* as maximum. The IBP-CBD found that Sesbreño was released from confinement on 27 July 2001 following his acceptance of the conditions of his parole on 10 July 2001.

The IBP-CBD ruled that conviction for a crime involving moral turpitude is a ground for disbarment or suspension. Citing *International Rice Research Institute v. National Labor Relations Commission,*[1] the IBP-CBD further ruled that homicide may or may not involve moral turpitude depending on the degree of the crime. The IBP-CBD reviewed the decision of this Court convicting Sesbreño for the crime of homicide, and found that

[1] G.R. No. 97239, 12 May 1993, 221 SCRA 760.

the circumstances leading to the death of the victim involved moral turpitude. The IBP-CBD stated:

Neither victim Luciano Amparado nor his companion Christopher Yapchangco was shown to be a foe of respondent and neither had the victim Luciano nor his companion Christopher shown to have wronged the respondent. They simply happened to be at the wrong place and time the early morning of June 3, 1993.

The circumstances leading to the death of Luciano solely caused by respondent, bear the earmarks of moral turpitude. Paraphrasing what the Supreme Court observed in Soriano v. Dizon, supra, the respondent, by his conduct, displayed extreme arrogance and feeling of self-importance. Respondent acted like a god who deserved not to be slighted by a couple of drunks who may have shattered the stillness of the early morning with their boisterous antics, natural display of loud bravado of drunken men who had one too many. Respondent's inordinate overreaction to the ramblings of drunken men who were not even directed at respondent reflected poorly on his fitness to be a member of the legal profession. Respondent was not only vindictive without a cause; he was cruel with a misplaced sense of superiority.[2]

Following the ruling of this Court in *Soriano v. Atty. Dizon*[3] where the respondent was disbarred for having been convicted of frustrated homicide, the IBP-CBD recommended that Sesbreño be disbarred and his name stricken from the Roll of Attorneys.

In its Resolution No. XX-2013-19 dated 12 February 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD.

On 6 May 2013, Sesbreño filed a motion for reconsideration before the IBP-CBD. Sesbreño alleged that the IBP-CBD misunderstood and misapplied *Soriano v. Atty. Dizon.* He alleged that the attendant circumstances in *Soriano* are disparate, distinct, and different from his case. He further alleged that there was no condition set on the grant of executive clemency to him; and thus, he was restored to his full civil and political rights. Finally,

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[2] *Rollo* (A.C. No. 10457), pp. 275-276.

[3] 515 Phil. 635 (2006).

Sesbreño alleged that after his wife died in an ambush, he already stopped appearing as private prosecutor in the case for bigamy against Garcia and that he already advised his clients to settle their other cases. He alleged that Garcia already withdrew the complaints against him.

On 11 February 2014, the IBP Board of Governors passed Resolution No. XX-2014-31 denying Sesbreño's motion for reconsideration. The IBP-CBD transmitted the records of the case to the Office of the Bar Confidant on 20 May 2014. CBD Case No. 08-2273 was redocketed as A.C. No. 10457. In the Court's Resolution dated 30 September 2014, the Court consolidated A.C. No. 7973 and A.C. No. 10457.

The only issue in these cases is whether conviction for the crime of homicide involves moral turpitude.

We adopt the findings and recommendation of the IBP-CBD and approve Resolution No. XX-2013-19 dated 12 February 2013 and Resolution No. XX-2014-31 dated 11 February 2014 of the IBP Board of Governors.

Section 27, Rule 138 of the Rules of Court states that a member of the bar may be disbarred or suspended as attorney by this Court by reason of his conviction of a crime involving moral turpitude. This Court has ruled that disbarment is the appropriate penalty for conviction by final judgment for a crime involving moral turpitude.[4] Moral turpitude is an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men or to society in general, contrary to justice, honesty, modesty, or good morals.[5]

The question of whether conviction for homicide involves moral turpitude was discussed by this Court in *International Rice Research Institute v. NLRC*[6] where it ruled:

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[4] *Re: SC Decision Dated May 20, 2008 in G.R. No. 161455 Under Rule 139-B of the Rules of Court v. Atty. Rodolfo D. Pactolin*, A.C. No. 7940, 24 April 2012, 670 SCRA 366.

[5] *Catalan, Jr. v. Silvosa*, A.C. No. 7360, 24 July 2012, 677 SCRA 352.

[6] *Supra* note 1.

This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances. While x x x generally but not always, crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, it cannot always be ascertained whether moral turpitude does or does not exist by classifying a crime as *malum in se* or as *malum prohibitum*, since there are crimes which are *mala in se* and yet rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. It follows therefore, that moral turpitude is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached.[7]

In *People v. Sesbreño,*[8] the Court found Sesbreño guilty of homicide and ruled:

WHEREFORE, the assailed decision of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No. CBU-31733 is hereby *MODIFIED*. Appellant Raul H. Sesbreño is hereby found GUILTY of HOMICIDE and hereby sentenced to suffer a prison term of 9 years and 1 day of *prision mayor*, as a minimum, to 16 years and 4 months of *reclusion temporal*, as a maximum, with accessory penalties provided by law, to indemnify the heirs of the deceased Luciano Amparado in the amount of ₱50,000.00 and to pay the costs.

SO ORDERED.[9]

We reviewed the Decision of this Court and we agree with the IBP-CBD that the circumstances show the presence of moral turpitude.

The Decision showed that the victim Luciano Amparado (Amparado) and his companion Christopher Yapchangco

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[7] *Supra* note 1, at 768.

[8] 372 Phil. 762 (1999).

[9] *Id.* at 795.

(Yapchangco) were walking and just passed by Sesbreño's house when the latter, without any provocation from the former, went out of his house, aimed his rifle, and started firing at them. According to Yapchangco, they were about five meters, more or less, from the gate of Sesbreño when they heard the screeching sound of the gate and when they turned around, they saw Sesbreño aiming his rifle at them. Yapchangco and Amparado ran away but Amparado was hit. An eyewitness, Rizaldy Rabanes (Rabanes), recalled that he heard shots and opened the window of his house. He saw Yapchangco and Amparado running away while Sesbreño was firing his firearm rapidly, hitting Rabanes' house in the process. Another witness, Edwin Parune, saw Amparado fall down after being shot, then saw Sesbreño in the middle of the street, carrying a long firearm, and walking back towards the gate of his house. The IBP-CBD correctly stated that Amparado and Yapchangco were just at the wrong place and time. They did not do anything that justified the indiscriminate firing done by Sesbreño that eventually led to the death of Amparado.

We cannot accept Sesbreño's argument that the executive clemency restored his full civil and political rights. Sesbreño cited *In re Atty. Parcasio*[10] to bolster his argument. In that case, Atty. Parcasio was granted "an absolute and unconditional pardon"[11] which restored his "full civil and political rights,"[12] a circumstance not present in these cases. Here, the Order of Commutation[13] did not state that the pardon was absolute and unconditional. The accessory penalties were not mentioned when the original sentence was recited in the Order of Commutation and they were also not mentioned in stating the commuted sentence. It only states:

> By virtue of the authority conferred upon me by the Constitution and upon the recommendation of the Board of Pardons and Parole,

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[10] 161 Phil. 437 (1976).

[11] *Id*. at 441.

[12] *Id*.

[13] *Rollo* (A.C. No. 10457), p. 154.

the original sentence of prisoner RAUL SESBREÑO Y HERDA convicted by the Regional Trial Court, Cebu City and Supreme Court and sentenced to an indeterminate prison term of from 9 years and 1 day to 16 years and 4 months imprisonment and to pay an indemnity of ₱50,000.00 is/are hereby commuted to an indeterminate prison term of from 7 years and 6 months to 10 years imprisonment and to pay an indemnity of ₱50,000.00.[14]

Again, there was no mention that the executive clemency was absolute and unconditional and restored Sesbreño to his full civil and political rights.

There are four acts of executive clemency that the President can extend: the President can grant reprieves, commutations, pardons, and remit fines and forfeitures, after conviction by final judgment.[15] In this case, the executive clemency merely "**commuted to an indeterminate prison term of 7 years and 6 months to 10 years imprisonment**" the penalty imposed on Sesbreño. **Commutation is a mere reduction of penalty**.[16] **Commutation only partially extinguished criminal liability**.[17] The penalty for Sesbreño's crime was never wiped out. He served the commuted or reduced penalty, for which reason he was released from prison. More importantly, the Final Release and Discharge[18] stated that "**[i]t is understood that such x x x accessory penalties of the law as have not been expressly remitted herein shall subsist**." Hence, the *Parcasio* case has no application here. Even if Sesbreño has been granted pardon, there is nothing in the records that shows that it was a full and unconditional pardon. In addition, the practice of law is not a right but a privilege.[19] It is granted only to those possessing

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[14] *Id*

[15] Section 19, Article VII, 1987 Constitution. See *Garcia v. Chairman, Commission on Audit,* G.R. No. 75025, 14 September 1993, 226 SCRA 356.

[16] *Cabantag v. Wolfe*, 6 Phil. 273 (1906).

[17] Article 94, Revised Penal Code.

[18] *Rollo* (A.C. No. 10457), p. 155.

[19] *Overgaard v. Atty. Valdez*, 588 Phil. 422 (2008).

good moral character.[20] A violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty against a lawyer, including the penalty of disbarment.[21]

WHEREFORE, respondent Raul H. Sesbreño is **DISBARRED** effective immediately upon his receipt of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts all over the country. Let a copy of this Decision be attached to the personal records of respondent.

SO ORDERED.

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

Brion, J., on leave.

Reyes, J., no part.

EN BANC

[A.C. No. 10537. February 3, 2015]

REYNALDO G. RAMIREZ, *complainant, vs.* **ATTY. MERCEDES BUHAYANG-MARGALLO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE IN HANDLING THE CLIENT'S CAUSE, COMMITTED.—

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[20] *Id.*

[21] *Id.*

Respondent Atty. Margallo was unjustifiably remiss in her duties as legal counsel to Ramirez. The lack of communication and coordination between respondent Atty. Margallo and her client was palpable but was not due to the lack of diligence of her client. This cost complainant Ramirez his entire case and left him with no appellate remedies. His legal cause was orphaned not because a court of law ruled on the merits of his case, but because a person privileged to act as counsel failed to discharge her duties with the requisite diligence. Her assumption that complainant Ramirez was no longer interested to pursue the Appeal is a poor excuse. There was no proof that she exerted efforts to communicate with her client. This is an admission that she abandoned her obligation as counsel on the basis of an assumption. Respondent Atty. Margallo failed to exhaust all possible means to protect complainant Ramirez's interest, which is contrary to what she had sworn to do as a member of the legal profession. For these reasons, she clearly violated Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility.

2. ID.; ID.; ID.; PROPER PENALTY IS TWO-YEAR SUSPENSION FROM THE PRACTICE OF LAW.— Respondent Atty. Margallo's position that a two-year suspension is too severe considering that it is her first infraction cannot be sustained. In *Caranza Vda. De Saldivar*, we observed: As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of the respondent were suspended for a period of six (6) months. x x x *Caranza Vda. De Saldivar* did not leave the clients without procedural remedies. On the other hand, respondent Atty. Margallo's neglect resulted in her client having no further recourse in court to protect his legal interests. This lack of diligence, to the utmost prejudice of complainant Ramirez who relied on her alleged competence as counsel, must not be tolerated. It is time that we communicate that lawyers must actively manage cases entrusted to them. There should be no more room for an inertia of mediocrity. Parenthetically, it is this court that has the constitutionally mandated duty to discipline lawyers. Under the current rules, the duty to assist fact finding can be delegated to the Integrated Bar of the Philippines. The findings of the Integrated Bar, however, can only be recommendatory, consistent with the constitutional powers

of this court. Its recommended penalties are also, by its nature, recommendatory. Despite the precedents, it is the Integrated Bar of the Philippines that recognizes that the severity of the infraction is worth a penalty of two-year suspension. We read this as a showing of its desire to increase the level of professionalism of our lawyers.

APPEARANCES OF COUNSEL

Peter Steve Lim for complainant.

R E S O L U T I O N

LEONEN, *J.*:

When an action or proceeding is initiated in our courts, lawyers become the eyes and ears of their clients. Lawyers are expected to prosecute or defend the interests of their clients without need for reminders. The privilege of the office of attorney grants them the ability to warrant to their client that they will manage the case as if it were their own. The relationship between an attorney and client is a sacred agency. It cannot be disregarded on the flimsy excuse that the lawyer accepted the case only because he or she was asked by an acquaintance. The professional relationship remains the same regardless of the reasons for the acceptance by counsel and regardless of whether the case is highly paying or pro bono.

Atty. Mercedes Buhayang-Margallo's (Atty. Margallo) inaction resulted in a lost appeal, terminating the case of her client not on the merits but due to her negligence. She made it appear that the case was dismissed on the merits when, in truth, she failed to file the Appellant's Brief on time. She did not discharge her duties of candor to her client.

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[*] Proofreading refers to modifications of the circulated opinion to correct grammatical errors, citations, and format of footnotes. It can include minor revisions affecting style and language to improve readability. I reserve the option to include arguments orally made during the deliberations.

This court resolves the Petition for Review[1] filed by Atty. Margallo under Rule 139-B, Section 12 of the Rules of Court, assailing the Resolution of the Board of Governors of the Integrated Bar of the Philippines.

In the Resolution[2] dated March 21, 2014, the Board of Governors of the Integrated Bar of the Philippines affirmed with modification its earlier Resolution[3] dated March 20, 2013. In its delegated capacity to conduct fact finding for this court, it found that respondent Atty. Margallo had violated Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility.[4] Consequently, the Board of Governors recommended that Atty. Margallo be suspended from the practice of law for two (2) years.[5]

In the Complaint[6] filed on January 20, 2010 before the Commission on Bar Discipline of the Integrated Bar of the Philippines, complainant Reynaldo Ramirez (Ramirez) alleged that he engaged Atty. Margallo's services as legal counsel in a civil case for Quieting of Title entitled "*Spouses Roque v. Ramirez*."[7] The case was initiated before the Regional Trial Court of Binangonan, Rizal, Branch 68.[8]

According to Ramirez, Atty. Margallo contacted him on or about March 2004, as per a referral from a friend of Ramirez's sister.[9] He alleged that Atty. Margallo had offered her legal services on the condition that she be given 30% of the land

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[1] *Rollo*, pp. 319-357.

[2] *Id*. at 310.

[3] *Id*. at 311.

[4] *Id*. at 312.

[5] *Id*. at 310.

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

[7] *Id*. at 312.

[8] *Id*.

[9] *Id*. at 3.

subject of the controversy instead of attorney's fees.[10] It was also agreed upon that Ramirez would pay Atty. Margallo 1,000.00 per court appearance.[11]

On October 19, 2006, the Regional Trial Court promulgated a Decision adverse to Ramirez.[12] Atty. Margallo advised him to appeal the judgment. She committed to file the Appeal before the Court of Appeals.[13]

The Appeal was perfected and the records were sent to the Court of Appeals sometime in 2008.[14] On December 5, 2008, the Court of Appeals directed Ramirez to file his Appellant's Brief. Ramirez notified Atty. Margallo, who replied that she would have one prepared.[15]

On January 8, 2009, Ramirez contacted Atty. Margallo to follow up on the Appellant's Brief. Atty. Margallo informed him that he needed to meet her to sign the documents necessary for the brief.[16]

On several occasions, Ramirez followed up on the status of the brief, but he was told that there was still no word from the Court of Appeals.[17]

On August 26, 2009, Atty. Margallo informed Ramirez that his Appeal had been denied.[18] She told him that the Court of Appeals' denial was due to Ramirez's failure to establish his filiation with his alleged father, which was the basis of his claim.[19]

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[10] *Id*. at 313.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 314.

She also informed him that they could no longer appeal to this court since the Decision of the Court of Appeals had been promulgated and the reglementary period for filing an Appeal had already lapsed.[20]

Ramirez went to the Court of Appeals. There, he discovered that the Appellant's Brief was filed on April 13, 2009 with a Motion for Reconsideration and Apologies for filing beyond the reglementary period.[21]

Ramirez alleged that Atty. Margallo had violated Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility.[22] By way of defense, Atty. Margallo argued that she had agreed to take on the case for free, save for travel expense of ₱1,000.00 per hearing. She also claimed that she had candidly informed Ramirez and his mother that they only had a 50% chance of winning the case.[23] She denied ever having entered into an agreement regarding the contingent fee worth 30% of the value of the land subject of the controversy.

Atty. Margallo asserted that she would not have taken on the Appeal except that the mother of Ramirez had begged her to do so.[24] She claimed that when she instructed Ramirez to see her for document signing on January 8, 2009, he ignored her. When he finally showed up on March 2009, he merely told her that he had been busy.[25] Her failure to immediately inform Ramirez of the unfavorable Decision of the Court of Appeals was due to losing her client's number because her 8-year-old daughter played with her phone and accidentally erased all her contacts.[26]

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[20] *Id*. at 313.

[21] *Id*.

[22] *Id*. at 312.

[23] *Id*. at 314.

[24] *Id*.

[25] *Id*. at 315.

[26] *Id*.

Mandatory conference and findings of the Integrated Bar of the Philippines

The dispute was set for mandatory conference on June 3, 2010.[27] Only Ramirez appeared despite Atty. Margallo having received notice.[28] The mandatory conference was reset to July 22, 2010. Both parties then appeared and were directed to submit their position papers.[29]

Commissioner Cecilio A.C. Villanueva recommended that Atty. Margallo be reprimanded for her actions and be given a stern warning that her next infraction of a similar nature shall be dealt with more severely.[30] This was based on his two key findings. First, Atty. Margallo allowed the reglementary period for filing an Appellant's Brief to lapse by assuming that Ramirez no longer wanted to pursue the case instead of exhausting all means possible to protect the interest of her client.[31] Second, Atty. Margallo had been remiss in her duties as counsel, resulting in the loss of Ramirez's statutory right to seek recourse with the Court of Appeals.[32]

In the Resolution[33] dated March 20, 2013, the Board of Governors of the Integrated Bar of the Philippines adopted and approved the recommendation of the Commission on Bar Discipline. The Board of Governors resolved to recommend a penalty of reprimand to Atty. Margallo with a stern warning that repetition of the same or similar act shall be dealt with more severely.

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[27] *Id*. at 316.

[28] *Id*.

[29] *Id*.

[30] *Id.* at 318.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 311.

Ramirez seasonably filed a Motion for Reconsideration on July 16, 2013.[34] In the Resolution dated March 21, 2014, the Board of Governors granted Ramirez's Motion for Reconsideration and increased the recommended penalty to suspension from practice of law for two (2) years.[35]

On August 20, 2014, Atty. Margallo filed a Petition for Review under Rule 139-B, Section 12 of the Rules of Court.[36] She alleged that the recommended penalty of suspension was too severe considering that she had been very careful and vigilant in defending the cause of her client. She also averred that this was the first time a Complaint was filed against her.[37]

Ramirez thereafter filed an undated Motion to adopt his Motion for Reconsideration previously filed with the Commission on Bar Discipline as a Comment on Atty. Margallo's Petition for Review.[38] In the Resolution[39] dated October 14, 2014, this court granted Ramirez's Motion. Atty. Margallo filed her Reply[40] on October 6, 2014.

This court's ruling

The Petition is denied for lack of merit.

The relationship between a lawyer and a client is "imbued with utmost trust and confidence."[41] Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases

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[34] *Id*. at 296-298.

[35] *Id*. at 310.

[36] *Id*. at 319.

[37] *Id*. at 326–327.

[38] *Id*. at 545.

[39] *Id*. at 549.

[40] *Id*. at 551.

[41] *Caranza Vda. de Saldivar v. Cabanes Jr.*, A.C. No. 7749, July 8, 2013, 700 SCRA 734, 741 [Per *J*. Perlas-Bernabe, Second Division].

or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court. The expectation to maintain a high degree of legal proficiency and attention remains the same whether the represented party is a high-paying client or an indigent litigant.[42]

Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility clearly provide:

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

In *Caranza Vda. De Saldivar v. Cabanes, Jr.*,[43] a lawyer was suspended after failing to justify his absence in a scheduled preliminary conference, which resulted in the case being submitted for resolution. This was aggravated by the lawyer's failure to inform his client about the adverse ruling of the Court of Appeals, thereby precluding the litigant from further pursuing an Appeal. This court found that these actions amounted to gross negligence tantamount to breaching Canons 17 and 18 of the Code of Professional Responsibility:

The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, *clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling*

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[42] *Id*.

[43] A.C. No. 7749, July 8, 2013, 700 SCRA 734 [Per *J.* Perlas-Bernabe, Second Division].

their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.

. . . .

Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but *also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.*

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the *lawyer's mere failure to perform the obligations due his client is per se a violation*.[44] (Emphasis supplied, citations omitted)

Respondent Atty. Margallo was unjustifiably remiss in her duties as legal counsel to Ramirez.

The lack of communication and coordination between respondent Atty. Margallo and her client was palpable but was not due to the lack of diligence of her client. This cost complainant Ramirez his entire case and left him with no appellate remedies. His legal cause was orphaned not because a court of law ruled on the merits of his case, but because a person privileged to act as counsel failed to discharge her duties with the requisite diligence. Her assumption that complainant Ramirez was no longer interested to pursue the Appeal is a poor excuse. There was no proof that she exerted efforts to communicate with her client. This is an admission that she abandoned her obligation as counsel on the basis of an assumption. Respondent Atty. Margallo failed to exhaust all possible means to protect complainant Ramirez's interest, which is contrary to what she had sworn to do as a member of the legal profession. For these

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[44] *Id.* at 741-742.

reasons, she clearly violated Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility.

A problem arises whenever agents, entrusted to manage the interests of another, use their authority or power for their benefit or fail to discharge their duties. In many agencies, there is information assymetry between the principal and the entrusted agent. That is, there are facts and events that the agent must attend to that may not be known by the principal.

This information assymetry is even more pronounced in an attorney-client relationship. Lawyers are expected not only to be familiar with the minute facts of their cases but also to see their relevance in relation to their causes of action or their defenses. The salience of these facts is not usually patent to the client. It can only be seen through familiarity with the relevant legal provisions that are invoked with their jurisprudential interpretations. More so with the intricacies of the legal procedure. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client.

Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which lawyer to engage, he or she usually does so on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full costs of indifference or negligence.

Respondent Atty. Margallo's position that a two-year suspension is too severe considering that it is her first infraction cannot be sustained. In *Caranza Vda. De Saldivar*, we observed:

> As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of the respondent were suspended for a period of six (6) months. In *Aranda v. Elayda*, a lawyer who failed to appear at the

scheduled hearing despite due notice which resulted in the submission of the case for decision was found guilty of gross negligence and hence, suspended for six (6) months. In *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, a lawyer who did not file a pre-trial brief and was absent during the pre-trial conference was likewise suspended for six (6) months. In *Abiero v. Juanino*, a lawyer who neglected a legal matter entrusted to him by his client in breach of Canons 17 and 18 of the Code was also suspended for six (6) months. Thus, ***consistent with existing jurisprudence, the Court finds it proper to impose the same penalty against respondent and accordingly suspends him for a period of six (6) months***.[45] (Emphasis supplied, citations omitted)

Caranza Vda. De Saldivar did not leave the clients without procedural remedies. On the other hand, respondent Atty. Margallo's neglect resulted in her client having no further recourse in court to protect his legal interests. This lack of diligence, to the utmost prejudice of complainant Ramirez who relied on her alleged competence as counsel, must not be tolerated. It is time that we communicate that lawyers must actively manage cases entrusted to them. There should be no more room for an inertia of mediocrity.

Parenthetically, it is this court that has the constitutionally mandated duty to discipline lawyers.[46] Under the current rules, the duty to assist fact finding can be delegated to the Integrated Bar of the Philippines. The findings of the Integrated Bar, however, can only be recommendatory, consistent with the constitutional powers of this court. Its recommended penalties are also, by its nature, recommendatory. Despite the precedents, it is the Integrated Bar of the Philippines that recognizes that the severity of the infraction is worth a penalty of two-year suspension. We read this as a showing of its desire to increase the level of professionalism of our lawyers.

This court is not without jurisdiction to increase the penalties imposed in order to address a current need in the legal profession.

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[45] *Id*. at 744.

[46] *See* CONST. (1987), Art. VIII, Sec. 11.

The desire of the Integrated Bar of the Philippines to ensure a higher ethical standard for its members' conduct is laudable. The negligence of respondent Atty. Margallo coupled with her lack of candor is reprehensible.

WHEREFORE, the Petition for Review is **DENIED**. The Recommendations and Resolution of the Board of Governors of the Integrated Bar of the Philippines dated March 21, 2014 is **ACCEPTED, ADOPTED AND AFFIRMED.** Atty. Mercedes Buhayang-Margallo is hereby **SUSPENDED from the practice of law for two (2) years, with a stern warning that a repetition of the same or similar act shall be dealt with more severely. This decision is immediately executory.**

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[A.C. No. 10681. February 3, 2015]

SPOUSES HENRY A. CONCEPCION and BLESILDA S. CONCEPCION, *complainants, vs.* **ATTY. ELMER A. DELA ROSA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS: ATTORNEYS; BORROWING MONEY FROM CLIENTS AND REFUSING TO PAY THE SAME CONSTITUTE VIOLATION OF CANON 7 AND RULE 16.04,

CANON 16 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [A]s correctly pointed out by complainants, it would be illogical for them to extend a ₱2,500,000.00 loan without any collateral or security to a person they do not even know. On the other hand, complainants were able to submit documents showing respondent's receipt of the checks and their encashment, as well as his agreement to return the ₱2,500,000.00 plus interest. This is bolstered by the fact that the loan transaction was entered into during the existence of a lawyer-client relationship between him and complainants, allowing the former to wield a greater influence over the latter in view of the trust and confidence inherently imbued in such relationship. Under Rule 16.04, Canon 16 of the CPR, a lawyer is prohibited from borrowing money from his client unless the client's interests are fully protected x x x The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. In *Frias v. Atty. Lozada* (*Frias*) the Court categorically declared that a lawyer's act of asking a client for a loan, as what herein respondent did, is unethical x x x As above-discussed, respondent borrowed money from complainants who were his clients and whose interests, by the lack of any security on the loan, were not fully protected. Owing to their trust and confidence in respondent, complainants relied solely on the former's word that he will return the money plus interest within five (5) days. However, respondent abused the same and reneged on his obligation, giving his previous clients the runaround up to this day. Accordingly, there is no quibble that respondent violated Rule 16.04 of the CPR. In the same vein, the Court finds that respondent also violated Canon 7 of the CPR which reads: CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. In unduly borrowing money from the complainants and by blatantly refusing to pay the same, respondent abused the trust and confidence reposed in him by

his clients, and, in so doing, failed to uphold the integrity and dignity of the legal profession. Thus, he should be equally held administratively liable on this score.

2. **ID.; ID.; ID.; PROPER PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR THREE (3) YEARS.—** The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In *Frias,* the Court suspended the lawyer from the practice of law for two (2) years after borrowing ₱900,000.00 from her client, refusing to pay the same despite court order, and representing conflicting interests. Considering the greater amount involved in this case and respondent's continuous refusal to pay his debt, the Court deems it apt to suspend him from the practice of law for three (3) years, instead of the IBP's recommendation to suspend him indefinitely.

3. **ID.; ID.; ID.; RETURN OF MONEY RECEIVED FROM THE CLIENTS NOT IN CONSIDERATION OF PROFESSIONAL SERVICES IS BEYOND THE AMBIT OF AN ADMINISTRATIVE CASE; CIVIL LIABILITY FOR MONEY NOT INTRINSICALLY LINKED TO PROFESSIONAL ENGAGEMENT IS SEPARATE AND DISTINCT FROM RESPONDENT'S ADMINISTRATIVE LIABILITY.—** The Court also deems it appropriate to modify the IBP's Resolution insofar as it orders respondent to return to complainants the amount of ₱2,500,000.00 and the legal interest thereon. It is settled that in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. In this case, respondent received the ₱2,500,000.00 as a loan from complainants and not in consideration of his professional services. Hence, the IBP's recommended return of the aforementioned sum lies beyond the ambit of this administrative case, and thus cannot be sustained.

APPEARANCES OF COUNSEL

Kathryn Jessica Pineda-Dela Serna for complainants.
De la Rosa Nagtalon Elizaga Bacan-Pagente Partners & Associates Attorney-at-Law for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an administrative case that stemmed from a Verified Complaint[1] filed by complainants Spouses Henry A. Concepcion (Henry) and Blesilda S. Concepcion (Blesilda; collectively complainants) against respondent Atty. Elmer A. dela Rosa (respondent), charging him with gross misconduct for violating, among others, Rule 16.04 of the Code of Professional Responsibility (CPR).

The Facts

In their Verified Complaint, complainants alleged that from 1997[2] until August 2008,[3] respondent served as their retained lawyer and counsel. In this capacity, respondent handled many of their cases and was consulted on various legal matters, among others, the prospect of opening a pawnshop business towards the end of 2005. Said business, however, failed to materialize.[4]

Aware of the fact that complainants had money intact from their failed business venture, respondent, on March 23, 2006, called Henry to borrow the amount of ₱2,500,000.00, which he promised to return, with interest, five (5) days thereafter.

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[1] *Rollo*, pp. 78-93. See also complainants' letter-complaint to the Integrated Bar of the Philippines (IBP)-Misamis Oriental Chapter filed on January 11, 2010; *id.* at 3-5.

[2] See Retainer Contract dated October 9, 1997; *id.* at 84-87.

[3] See letter of termination of legal service dated August 20, 2008; *id.* at 93.

[4] *Id.* at 3 and 78-79.

Henry consulted his wife, Blesilda, who, believing that respondent would be soon returning the money, agreed to lend the aforesaid sum to respondent. She thereby issued three (3) EastWest Bank checks[5] in respondent's name:[6]

Check No.	**Date**	**Amount**	**Payee**
0000561925	03-23-06	₱750,000.00	Elmer dela Rosa
0000561926	03-23-06	₱850,000.00	Elmer dela Rosa
0000561927	03-23-06	₱900,000.00	Elmer dela Rosa
Total:		₱2,500,000.00	

Upon receiving the checks, respondent signed a piece of paper containing: (*a*) photocopies of the checks; and (*b*) an acknowledgment that he received the originals of the checks and that he agreed to return the ₱2,500,000.00, plus monthly interest of five percent (5%), within five (5) days.[7] In the afternoon of March 23, 2006, the foregoing checks were personally encashed by respondent.[8]

On March 28, 2006, or the day respondent promised to return the money, he failed to pay complainants. Thus, in April 2006, complainants began demanding payment but respondent merely made repeated promises to pay soon. On July 7, 2008, Blesilda sent a demand letter[9] to respondent, which the latter did not heed.[10] On August 4, 2008, complainants, through their new counsel, Atty. Kathryn Jessica dela Serna, sent another demand letter[11] to

[5] See *id*. at 88.

[6] *Id*. at 3 and 79.

[7] *Id*. at 89.

[8] *Id*. at 88.

[9] *Id*. at 90.

[10] *Id*. at 80.

[11] *Id*. at 91.

respondent.[12] In his Reply,[13] the latter denied borrowing any money from the complainants. Instead, respondent claimed that a certain Jean Charles Nault (Nault), one of his other clients, was the real debtor. Complainants brought the matter to the Office of the Lupong Tagapamayapa in Barangay Balulang, Cagayan de Oro City. The parties, however, failed to reach a settlement.[14]

On January 11, 2010, the IBP-Misamis Oriental Chapter received complainants' letter-complaint[15] charging respondent with violation of Rule 16.04 of the CPR. The rule prohibits lawyers from borrowing money from clients unless the latter's interests are fully protected by the nature of the case or by independent advice.[16]

In his Comment,[17] respondent denied borrowing ₱2,500,000.00 from complainants, insisting that Nault was the real debtor.[18] He also claimed that complainants had been attempting to collect from Nault and that he was engaged for that specific purpose.[19]

In their letter-reply,[20] complainants maintained that they extended the loan to respondent alone, as evidenced by the checks issued in the latter's name. They categorically denied knowing Nault and pointed out that it defies common sense for them to extend an unsecured loan in the amount of ₱2,500,000.00 to a person they do not even know. Complainants also submitted

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[12] *Id*. at 80.

[13] Dated August 7, 2008. *Id*. at 36-39.

[14] *Id*. at 92.

[15] *Id*. at 3-5.

[16] *Id*. at 5.

[17] Dated March 10, 2010. *Id*. at 17-68.

[18] As evidenced by the Acknowledgment dated March 23, 2006. See *id*. at 40.

[19] *Id*. at 19.

[20] *Id* at 69-70.

a copy of the Answer to Third Party Complaint[21] which Nault filed as third-party defendant in a related collection case instituted by the complainants against respondent.[22] In said pleading, Nault explicitly denied knowing complainants and alleged that it was respondent who incurred the subject loan from them.[23]

On November 23, 2010, the IBP-Misamis Oriental Chapter endorsed the letter-complaint to the IBP-Commission on Bar Discipline (CBD),[24] which was later docketed as CBD Case No. 11-2883.[25] In the course of the proceedings, respondent failed to appear during the scheduled mandatory conferences.[26] Hence, the same were terminated and the parties were directed to submit their respective position papers.[27] Respondent, however, did not submit any.

The IBP Report and Recommendation

On April 19, 2013, the IBP Investigating Commissioner, Jose I. de La Rama, Jr. (Investigating Commissioner), issued his Report[28] finding respondent guilty of violating: (*a*) Rule 16.04 of the CPR which provides that a lawyer shall not borrow money from his clients unless the client's interests are fully protected by the nature of the case or by independent advice; (*b*) Canon 7 which states that a lawyer shall uphold the integrity and dignity of the legal profession and support the activities of the IBP; and (*c*) Canon 16 which provides that a lawyer shall hold in trust all monies and properties of his client that may come into his possession.[29]

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[21] Dated February 26, 2010. *Id*. at 71-75.

[22] *Id*. at 70.

[23] *Id*. at 73.

[24] See 1st Endorsement dated November 23, 2010; *id*. at 2.

[25] See *id*. at 95.

[26] *Id*. at 214.

[27] See Order dated December 12, 2011 issued by Commissioner Jose I. De La Rama, Jr.; *id*. at 125.

[28] *Id*. at 209-221.

[29] *Id*. at 219-220.

The Investigating Commissioner observed that the checks were issued in respondent's name and that he personally received and encashed them. Annex "E"[30] of the Verified Complaint shows that respondent acknowledged receipt of the three (3) EastWest Bank checks and agreed to return the ₱2,500,000.00, plus a pro-rated monthly interest of five percent (5%), within five (5) days.[31]

On the other hand, respondent's claim that Nault was the real debtor was found to be implausible. The Investigating Commissioner remarked that if it is true that respondent was not the one who obtained the loan, he would have responded to complainants' demand letter; however, he did not.[32] He also observed that the acknowledgment[33] Nault allegedly signed appeared to have been prepared by respondent himself.[34] Finally, the Investigating Commissioner cited Nault's Answer to the Third Party Complaint which categorically states that he does not even know the complainants and that it was respondent alone who obtained the loan from them.[35]

In fine, the Investigating Commissioner concluded that respondent's actions degraded the integrity of the legal profession and clearly violated Rule 16.04 and Canons 7 and 16 of the CPR. Respondent's failure to appear during the mandatory conferences further showed his disrespect to the IBP-CBD.[36] Accordingly, the Investigating Commissioner recommended that respondent be disbarred and that he be ordered to return the ₱2,500,000.00 to complainants, with stipulated interest.[37]

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[30] *Id*. at 89.

[31] *Id*. at 215.

[32] *Id*.

[33] *Id*. at 35.

[34] *Id*. at 216.

[35] *Id*. at 219.

[36] *Id*. at 220.

[37] *Id*. at 220-221.

Finding the recommendation to be fully supported by the evidence on record and by the applicable laws and rule, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report in Resolution No. XX-2013-617 dated May 11, 2013,[38] but reduced the penalty against the respondent to indefinite suspension from the practice of law and ordered the return of the ₱2,500,000.00 to the complainants with legal interest, instead of stipulated interest.

Respondent sought a reconsideration[39] of Resolution No. XX-2013-617 which was, however, denied in Resolution No. XXI-2014-294[40] dated May 3, 2014.

The Issue Before the Court

The central issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

The Court concurs with the IBP's findings except as to its recommended penalty and its directive to return the amount of ₱2,500,000.00, with legal interest, to complainants.

I.

Respondent's receipt of the ₱2,500,000.00 loan from complainants is amply supported by substantial evidence. As the records bear out, Blesilda, on March 23, 2006, issued three (3) EastWest Bank Checks, in amounts totalling to ₱2,500,000.00, with respondent as the payee.[41] Also, Annex "E"[42] of the Verified Complaint shows that respondent acknowledged receipt of the checks and agreed to pay the complainants the loan plus the

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[38] Signed by National Secretary Nasser A. Marohomsalic. *Id*. at 208.

[39] See Motion for Reconsideration with Prayer to Re-Open Investigation and/or Admit Evidence dated September 6, 2013; *id*. at 224-234.

[40] *Id*. at 283-284

[41] *Id*. at 88.

[42] *Id*. at 89.

pro-rated interest of five percent (5%) per month within five (5) days.[43] The dorsal sides of the checks likewise show that respondent personally encashed the checks on the day they were issued.[44] With respondent's direct transactional involvement and the actual benefit he derived therefrom, absent too any credible indication to the contrary, the Court is thus convinced that respondent was indeed the one who borrowed the amount of ₱2,500,000.00 from complainants, which amount he had failed to return, despite their insistent pleas.

Respondent's theory that Nault is the real debtor hardly inspires belief. While respondent submitted a document purporting to be Nault's acknowledgment of his debt to the complainants, Nault, in his Answer to Third Party Complaint, categorically denied knowing the complainants and incurring the same obligation.

Moreover, as correctly pointed out by complainants, it would be illogical for them to extend a ₱2,500,000.00 loan without any collateral or security to a person they do not even know. On the other hand, complainants were able to submit documents showing respondent's receipt of the checks and their encashment, as well as his agreement to return the ₱2,500,000.00 plus interest. This is bolstered by the fact that the loan transaction was entered into during the existence of a lawyer-client relationship between him and complainants,[45] allowing the former to wield a greater influence over the latter in view of the trust and confidence inherently imbued in such relationship.

Under Rule 16.04, Canon 16 of the CPR, a lawyer is prohibited from borrowing money from his client unless the client's interests are fully protected:

CANON 16 – A lawyer shall hold in trust all moneys and properties of his clients that may come into his possession.

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[43] *Id.*

[44] *Id.* at 88, see dorsal portion.

[45] *Id.* at 22.

Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client."

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client.[46] The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.[47] In *Frias v. Atty. Lozada*[48] (*Frias*) the Court categorically declared that a lawyer's act of asking a client for a loan, as what herein respondent did, is unethical, to wit:

Likewise, her act of borrowing money from a client was a violation of [Rule] 16.04 of the Code of Professional Responsibility:

> A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case and by independent advice.

A lawyer's act of asking a client for a loan, as what respondent did, is very unethical. It comes within those acts considered as abuse of client's confidence. The canon presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on her obligation.[49] (Emphasis supplied)

As above-discussed, respondent borrowed money from complainants who were his clients and whose interests, by the lack of any security on the loan, were not fully protected. Owing

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[46] *Junio v. Atty. Grupo*, 423 Phil. 808, 816 (2001).

[47] *Frias v. Atty. Lozada*, 513 Phil. 512, 521-522 (2005).

[48] *Id.*

[49] *Id.*

to their trust and confidence in respondent, complainants relied solely on the former's word that he will return the money plus interest within five (5) days. However, respondent abused the same and reneged on his obligation, giving his previous clients the runaround up to this day. Accordingly, there is no quibble that respondent violated Rule 16.04 of the CPR.

In the same vein, the Court finds that respondent also violated Canon 7 of the CPR which reads:

> CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

In unduly borrowing money from the complainants and by blatantly refusing to pay the same, respondent abused the trust and confidence reposed in him by his clients, and, in so doing, failed to uphold the integrity and dignity of the legal profession. Thus, he should be equally held administratively liable on this score.

That being said, the Court turns to the proper penalty to be imposed and the propriety of the IBP's return directive.

II.

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[50]

In *Frias,* the Court suspended the lawyer from the practice of law for two (2) years after borrowing ₱900,000.00 from her client, refusing to pay the same despite court order, and representing conflicting interests.[51] Considering the greater amount involved in this case and respondent's continuous refusal to pay his debt, the Court deems it apt to suspend him from the practice of law for three (3) years, instead of the IBP's recommendation to suspend him indefinitely.

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[50] *Sps. Soriano v. Atty. Reyes*, 523 Phil. 1, 16 (2006).

[51] *Supra* note 47, at 522.

The Court also deems it appropriate to modify the IBP's Resolution insofar as it orders respondent to return to complainants the amount of ₱2,500,000.00 and the legal interest thereon. It is settled that in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.[52] In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. In this case, respondent received the ₱2,500,000.00 as a loan from complainants and not in consideration of his professional services. Hence, the IBP's recommended return of the aforementioned sum lies beyond the ambit of this administrative case, and thus cannot be sustained.

WHEREFORE, respondent Atty. Elmer A. dela Rosa is found guilty of violating Canon 7 and Rule 16.04, Canon 16 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) years effective upon finality of this Decision, with a stern warning that a commission of the same or similar acts will be dealt with more severely. This Decision is immediately executory upon receipt.

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administration for circulation to all the courts.

SO ORDERED.

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

Brion, J., on leave.

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[52] *Roa v. Atty. Moreno*, 633 Phil. 1, 8 (2010). See also *Suzuki v. Atty. Tiamson*, 508 Phil. 130, 142 (2005).

EN BANC

[G.R. No. 207257. February 3, 2015]

HON. RAMON JESUS P. PAJE, in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), *petitioner, vs.* **HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES,** *respondents.*

[G.R. No. 207276. February 3, 2015]

REDONDO PENINSULA ENERGY, INC., *petitioner, vs.* **HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A.**

BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, RAMON JESUS P. PAJE, in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES and SUBIC BAY METROPOLITAN AUTHORITY, *respondents.*

[G.R. No. 207282. February 3, 2015]

HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. RAFAEL V. MARIANO, HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSA, RODOLFO SAMBAJON, ***ET AL.,*** *petitioners, vs.* **RAMON JESUS P. PAJE in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, SUBIC BAY METROPOLITAN AUTHORITY, and REDONDO PENINSULA ENERGY, INC.,** *respondents.*

[G.R. No. 207366. February 3, 2015]

SUBIC BAY METROPOLITAN AUTHORITY, *petitioner, vs.* **HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA,**

GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, HON. RAMON JESUS P. PAJE, in his capacity as SECRETARY OF THE DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES AND REDONDO PENINSULA ENERGY, INC., *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE ON ENVIRONMENTAL CASES; PETITION FOR ISSUANCE OF A WRIT OF *KALIKASAN*; NATURE AND PURPOSE OF THE WRIT.—** The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries. It is intended "to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short" and seeks "to address the potentially exponential nature of large-scale ecological threats."

2. **ID.; ID.; ID.; REQUISITES THAT MUST BE PRESENT TO AVAIL OF THE REMEDY.—** Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

3. **ID.; ID.; ID.; PETITIONERS FAILED TO PROVE THAT THE CONSTRUCTION AND OPERATION OF THE POWER PLANT WILL CAUSE GRAVE ENVIRONMENTAL DAMAGE.—** In its January 30, 2013 Decision, the appellate court ruled that the Casiño Group failed to prove [their] allegations. We agree with the appellate court. Indeed, the three witnesses presented by the Casiño Group are not experts on the CFB technology or on environmental matters. These witnesses even admitted on cross-examination that they are not competent to testify on the environmental impact of the subject project. What is wanting in their testimonies is their technical knowledge of the project design/implementation or some other aspects of the project, even those not requiring expert knowledge, *vis-à-vis* the significant negative environmental impacts which the Casiño Group alleged will occur. Clearly, the Casiño Group failed to carry the *onus* of proving the alleged significant negative environmental impacts of the project. In comparison, RP Energy presented several experts to refute the allegations of the Casiño Group. x x x In upholding the evidence and arguments of RP Energy, relative to the lack of proof as to the alleged significant environmental damage that will be caused by the project, the appellate court relied mainly on the testimonies of experts, which we find to be in accord with judicial precedents. x x x Hence, we sustain the appellate court's findings that the Casiño Group failed to establish the alleged grave environmental damage which will be caused by the construction and operation of the power plant.
4. **ID.; ID.; ID.; ID.; NO SUFFICIENT COMPELLING REASON EXISTED TO COMPEL THE TESTIMONIES OF EXPERT WITNESSES; REASONS.—** [I]n environmental cases, the power to appoint friends of the court in order to shed light on matters requiring special technical expertise as well as the power to order ocular inspections and production of documents or things evince the main thrust of, and the spirit behind, the Rules to allow the court sufficient leeway in acquiring the necessary information to rule on the issues presented for its resolution, to the end that the right to a healthful and balanced ecology may be adequately protected. To draw a parallel, in the protection of the constitutional rights of an accused, when life or liberty is at stake, the testimonies of witnesses may be compelled as an attribute of the Due Process Clause. Here,

where the right to a healthful and balanced ecology of a substantial magnitude is at stake, should we not tread the path of caution and prudence by compelling the testimonies of these alleged experts? After due consideration, we find that, based on the statements in the Final Report, there is no sufficiently compelling reason to compel the testimonies of these alleged expert witnesses for the following reasons. First, the statements are not sufficiently *specific* to point to us a flaw (or flaws) in the study or design/implementation (or some other aspect) of the project which provides a causal link or, at least, a reasonable connection between the construction and operation of the project *vis-à-vis* potential grave environmental damage. In particular, they do not explain why the Environmental Management Plan (EMP) contained in the EIS of the project will not adequately address these concerns. Second, some of the concerns raised in the alleged statements, like acid rain, warming and acidification of the seawater, and discharge of pollutants were, as previously discussed, addressed by the evidence presented by RP Energy before the appellate court. Again, these alleged statements do not explain why such concerns are not adequately covered by the EMP of RP Energy. Third, the key observations of Dr. Cruz, while concededly assailing certain aspects of the EIS, do not clearly and specifically establish how these omissions have led to the issuance of an ECC that will pose significant negative environmental impacts once the project is constructed and becomes operational. The recommendations stated therein would seem to suggest points for improvement in the operation and monitoring of the project, but they do not clearly show why such recommendations are indispensable for the project to comply with existing environmental laws and standards, or how non-compliance with such recommendations will lead to an environmental damage of the magnitude contemplated under the writ of *kalikasan*. Again, these statements do not state with sufficient particularity how the EMP in the EIS failed to adequately address these concerns. Fourth, because the reason for the non-presentation of the alleged expert witnesses does not appear on record, we cannot assume that their testimonies are being unduly suppressed. By ruling that we do not find a sufficiently compelling reason to compel the taking of the testimonies of these alleged expert witnesses in relation to their serious objections to the power plant project, we do not foreclose the possibility that their testimonies could later on

be presented, in a proper case, to more directly, specifically and sufficiently assail the environmental soundness of the project and establish the requisite magnitude of actual or threatened environmental damage, if indeed present. After all, their sense of civic duty may well prevail upon them to voluntarily testify, if there are truly sufficient reasons to stop the project, above and beyond their inadequate claims in the Final Report that the project should not be pursued. As things now stand, however, we have insufficient bases to compel their testimonies for the reasons already proffered.

5. **ID.; ID.; ID.; THE VALIDITY OF AN ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) MAY BE CHALLENGED *VIA* A WRIT OF *KALIKASAN* SUBJECT TO CERTAIN QUALIFICATIONS.—** [T]he writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. This must be so if we are to preserve the noble and laudable purposes of the writ against those who seek to abuse it. An example of a defect or an irregularity in the issuance of an ECC, which could conceivably warrant the granting of the extraordinary remedy of the writ of *kalikasan*, is a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently rely on such substantially defective or fraudulent ECC in approving the implementation of the project. To repeat, in cases of defects

or irregularities in the issuance of an ECC, it is not sufficient to merely allege such defects or irregularities, but to show a causal link or reasonable connection with the environmental damage of the magnitude contemplated under the Rules. In the case at bar, no such causal link or reasonable connection was shown or even attempted relative to the aforesaid second set of allegations. It is a mere listing of the perceived defects or irregularities in the issuance of the ECC. This would have been sufficient reason to disallow the resolution of such issues in a writ of *kalikasan* case. However, inasmuch as this is the first time that we lay down this principle, we have liberally examined the alleged defects or irregularities in the issuance of the ECC and find that there is only one group of allegations, relative to the ECC, that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules. This is with respect to the allegation that there was no environmental impact assessment relative to the first and second amendments to the subject ECC. If this were true, then the implementation of the project can conceivably actually violate or threaten to violate the right to a healthful and balanced ecology of the inhabitants near the vicinity of the power plant. Thus, the resolution of such an issue could conceivably be resolved in a writ of *kalikasan* case provided that the case does not violate, or is an exception to the doctrine of exhaustion of administrative remedies and primary jurisdiction.

6. **ID.; ID.; ID.; ID.; SIGNATURE IN THE STATEMENT OF ACCOUNTABILITY IS NECESSARY FOR THE VALIDITY OF THE ECC.—** [T]he signing of the Statement of Accountability is an integral and significant component of the EIA process and the ECC itself. The evident intention is to bind the project proponent to the ECC conditions, which will ensure that the project will not cause significant negative environmental impacts by the "implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not currently covered by existing laws." Indeed, the EIA process would be a meaningless exercise if the project proponent shall not be strictly bound to faithfully comply with the conditions necessary to adequately protect the right of the people to a healthful and balanced ecology. Contrary to RP Energy's position, we, thus, find that

the signature of the project proponent's representative in the Statement of Accountability is necessary for the validity of the ECC. It is not, as RP Energy would have it, a mere formality and its absence a mere formal defect.

7. **ID.; ID.; ID.; ID.; CIRCUMSTANCES IN THE CASE AT BAR DO NOT WARRANT INVALIDATION OF THE ECC DESPITE LACK OF SIGNATURE IN THE STATEMENT OF ACCOUNTABILITY; REASONS.—** While it is clear that the signing of the Statement of Accountability is necessary for the validity of the ECC, we cannot close our eyes to the particular circumstances of this case. So often have we ruled that this Court is not merely a court of law but a court of justice. We find that there are several circumstances present in this case which militate against the invalidation of the ECC on this ground. We explain. First, the reason for the lack of signature was not adequately taken into consideration by the appellate court. x x x Due to the inadequacy of the transcript and the apparent lack of opportunity for the witness to explain the lack of signature, we find that the witness' testimony does not, by itself, indicate that there was a deliberate or malicious intent not to sign the Statement of Accountability. Second, as previously discussed, the concerned parties to this case, specifically, the DENR and RP Energy, were not properly apprised that the issue relative to the lack of signature would be decisive in the determination of the validity of the ECC. Consequently, the DENR and RP Energy cannot be faulted for not presenting proof during the course of the hearings to squarely tackle the issue of lack of signature. Third, after the appellate court ruled in its January 30, 2013 Decision that the lack of signature invalidated the ECC, RP Energy attached, to its Motion for Partial Reconsideration, a certified true copy of the ECC, issued by the DENR-EMB, which bore the signature of Mr. Aboitiz. The certified true copy of the ECC showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. The authenticity and veracity of this certified true copy of the ECC was not controverted by the Casiño Group in its comment on RP Energy's motion for partial reconsideration before the appellate court nor in their petition before this Court. Thus, in accordance with the presumption of regularity in the performance of official duties, it remains uncontroverted that the ECC on file with the DENR contains

the requisite signature of Mr. Aboitiz in the Statement of Accountability portion. x x x We note, however, that, as previously discussed, the certified true copy of the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008 or two days after the ECC's official release on December 22, 2008. The afore-discussed rules under the Revised Manual, however, state that the proponent shall sign the sworn statement of full responsibility on implementation of its commitments **prior** to the release of the ECC. It would seem that the ECC was first issued, then it was signed by Mr. Aboitiz, and thereafter, returned to the DENR to serve as its file copy. Admittedly, there is lack of strict compliance with the rules although the signature is present. Be that as it may, we find nothing in the records to indicate that this was done with bad faith or inexcusable negligence because of the inadequacy of the evidence and arguments presented, relative to the issue of lack of signature, in view of the manner this issue arose in this case, as previously discussed. Absent such proof, we are not prepared to rule that the procedure adopted by the DENR was done with bad faith or inexcusable negligence but we remind the DENR to be more circumspect in following the rules it provided in the Revised Manual. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*. Fourth, we partly agree with the DENR that the subsequent letter-requests for amendments to the ECC, signed by Mr. Aboitiz on behalf of RP Energy, indicate its implied conformity to the ECC conditions. In practical terms, if future litigation should occur due to violations of the ECC conditions, RP Energy would be estopped from denying its consent and commitment to the ECC conditions even if there was no signature in the Statement of Accountability.

8. **ID.; ID.; ID.; ID.; THE FIRST AND SECOND AMENDMENTS TO THE ECC WERE VALID.—** [W]e find that the appellate court erred when it ruled that the first and second amendments to the subject ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. The appellate court failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual on amendments to ECCs. Our examination of the provisions on amendments to ECCs, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its

discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments.

9. **ID.; ID.; ID.; ID.; CERTIFICATE OF NON-OVERLAP (CNO) IS NOT A PRECONDITION TO THE ISSUANCE OF ECC AND LACK OF IT DOES NOT RENDER THE ECC INVALID.—** [W]e find that the CNO requirement under Section 59 of the IPRA Law is not required to be obtained prior to the issuance of an ECC. As previously discussed, Section 59 aims to forestall the implementation of a project that may impair the right of ICCs/IPs to their ancestral domains, by ensuring or verifying that a project will not overlap with any ancestral domain prior to its implementation. However, because the issuance of an ECC does not result in the implementation of the project, there is no necessity to secure a CNO prior to an ECC's issuance as the goal or purpose, which Section 59 seeks to achieve, is, at the time of the issuance of an ECC, not yet applicable. In sum, we find that the ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity to secure the CNO under Section 59 before an ECC may be issued and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid.

10. **ID.; ID.; ID.; ID.; CNO SHOULD HAVE BEEN SECURED PRIOR TO THE CONSUMMATION OF THE LEASE AND DEVELOPMENT AGREEMENT (LDA) BETWEEN SUBIC BAY METROPOLITAN AUTHORITY (SBMA) AND RP ENERGY; THE COURT, HOWEVER, REFRAINED FROM INVALIDATING THE LDA DUE TO EQUITABLE CONSIDERATIONS.—** SBMA should have secured a CNO before entering into the LDA with RP Energy. Considering that Section 59 is a prohibitory statutory provision, a violation thereof would ordinarily result in the nullification of the contract. However, we rule that the harsh consequences of such a ruling should not be applied to the case at bar. The reason is that this is the first time that we lay down the foregoing rule of action so much so that it would be inequitable to retroactively

apply its effects with respect to the LDA entered into between SBMA and RP Energy. We also note that, under the particular circumstances of this case, there is no showing that SBMA and RP Energy had a deliberate or ill intent to escape, defeat or circumvent the mandate of Section 59 of the IPRA Law. On the contrary, they appear to have believed in good faith, *albeit* erroneously, that a CNO was no longer needed because of the afore-discussed defenses they raised herein. When the matter of lack of a CNO relative to the LDA was brought to their attention, through the subject Petition for Writ of *Kalikasan* filed by the Casiño Group, RP Energy, with the endorsement of SBMA, promptly undertook to secure the CNO, which was issued on October 31, 2012 and stated that the project site does not overlap with any ancestral domain. Thus, absent proof to the contrary, we are not prepared to rule that SBMA and RP Energy acted in bad faith or with inexcusable negligence, considering that the foregoing rule of action has not heretofore been laid down by this Court. As a result, we hold that the LDA should not be invalidated due to equitable considerations present here.

11. ID.; ID.; ID.; ID.; PRIOR APPROVAL OF THE CONCERNED *SANGGUNIANS* IS NOT NECESSARY TO THE IMPLEMENTATION OF THE POWER PLANT PROJECT; DECISION OF THE SBMA PREVAILS OVER THE OBJECTIONS OF THE CONCERNED *SANGGUNIANS*.— [W]e find that the power to approve or disapprove projects within the SSEZ is one such power over which the SBMA's authority prevails over the LGU's autonomy. Hence, there is no need for the SBMA to secure the approval of the concerned *sanggunians* prior to the implementation of the subject project. This interpretation is based on the broad grant of powers to the SBMA over all administrative matters relating to the SSEZ under Section 13 of RA 7227, as afore-discussed. Equally important, under Section 14, other than those involving defense and security, the SBMA's decision prevails in case of conflict between the SBMA and the LGUs in all matters concerning the SSEZ x x x Clearly, the subject project does not involve defense or security, but rather business and investment to further the development of the SSEZ. Such is in line with the objective of RA 7227 to develop the SSEZ into a self-sustaining industrial, commercial, financial and investment center. Hence, the

decision of the SBMA would prevail over the apparent objections of the concerned *sanggunians* of the LGUs.

12. **ID.; ID.; ID.; ID.; THE ISSUE ON THE VALIDITY OF THE THIRD AMENDMENT TO THE ECC CANNOT BE RESOLVED IN THIS CASE BECAUSE IT WAS NOT INCLUDED IN THE PRELIMINARY CONFERENCE.—** [T]he issue of the validity of the third amendment to the ECC was not part of the issues set during the preliminary conference, as it appears at that time that the application for the third amendment was still ongoing. x x x Given the invocation of the right to due process by RP Energy, we must sustain the appellate court's finding that the issue as to the validity of the third amendment cannot be adjudicated in this case.

13. **ID.; ID.; ID.; ID.; NATURE OF AMENDMENT IS CONSIDERED IN DETERMINING THE PROPER EIA DOCUMENT TYPE; NEW ENVIRONMENTAL IMPACT STATEMENT (EIS) IS NOT NECESSARY FOR AN AMENDMENT TO AN ECC IN CASE AT BAR.—** [T]here is nothing in PD 1586 which expressly requires an EIS for an amendment to an ECC. x x x [T]he rules take into consideration the nature of the amendment in determining the proper Environmental Impact Assessment (EIA) document type that the project proponent will submit in support of its application for an amendment to its previously issued ECC. A minor amendment will require a less detailed EIA document type, like a Project Description Report (PDR), while a major amendment will require a more detailed EIA document type, like an Environmental Performance Report and Management Plan (EPRMP) or even an EIS. The rules appear to be based on the premise that it would be unduly burdensome or impractical to require a project proponent to submit a detailed EIA document type, like an EIS, for amendments that, upon preliminary evaluation by the DENR, will not cause significant environmental impact. In particular, as applied to the subject project, the DENR effectively determined that it is impractical to require RP Energy to, in a manner of speaking, start from scratch by submitting a new EIS in support of its application for the first amendment to its previously issued ECC, considering that the existing EIS may be supplemented by an EPRMP to adequately evaluate the environmental impact of the proposed modifications under the first amendment. The same reasoning may be applied to the PDR relative to the second amendment.

VELASCO, JR., *J., concurring opinion*:

1. **REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; PETITION FOR ISSUANCE OF A WRIT OF *KALIKASAN;* THE BEST AVAILABLE AND PROPER REMEDY IN CASE AT BAR.—** The special civil action for a writ of *kalikasan* under Rule 7 of the Rules of Procedure for Environmental Cases (RPEC for brevity) is, I submit, the best available and proper remedy for petitioners Casiño, *et al.* As distinguished from other available remedies in the ordinary rules of court, the writ of *kalikasan* is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology. As a matter of fact, by explicit directive from the Court, the RPEC are SPECIAL RULES crafted precisely to govern environmental cases. On the other hand, the "remedies that can contribute to the protection of communities and their environment" alluded to in Justice Leonen's dissent clearly form part of the Rules of Court which by express provision of the special rules for environmental cases "shall apply in a suppletory manner" under Section 2 of Rule 22. Suppletory means "supplying deficiencies." It is apparent that there is no vacuum in the special rules on the legal remedy on unlawful acts or omission concerning environmental damage since precisely Rule 7 on the writ of *kalikasan* encompasses all conceivable situations of this nature.
2. **ID.; ID.; ID.; WRIT OF *KALIKASAN* PETITION AND RULE 65 *CERTIORARI* PETITION, DISTINGUISHED.—** The advent of A.M. No. 09-6-8-SC to be sure brought about significant changes in the procedural rules that apply to environmental cases. The differences on eight (8) areas between a Rule 65 *certiorari* petition and Rule 7 *kalikasan* petition may be stated as follows: l. **<u>Subject matter</u>**. Since its subject matter is any "unlawful act or omission," a Rule 7 *kalikasan* petition is broad enough to correct any act taken without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which is the subject matter of a Rule 65 certiorari petition. Any form of abuse of discretion as long as it constitutes an unlawful act or omission involving

the environment can be subject of a Rule 7 *kalikasan* petition. A Rule 65 petition, on the other hand, requires the abuse of discretion to be "grave." Ergo, a subject matter which ordinarily cannot properly be subject of a certiorari petition can be the subject of a *kalikasan* petition. 2. **Who may file**. Rule 7 has liberalized the rule on *locus standi*, such that availment of the writ of *kalikasan* is open to a broad range of suitors, to include even an entity authorized by law, people's organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated. Rule 65 allows only the aggrieved person to be the petitioner. 3. **Respondent**. The respondent in a Rule 65 petition is only the government or its officers, unlike in a *kalikasan* petition where the respondent may be a private individual or entity. 4. **Exemption from docket fees**. The *kalikasan* petition is exempt from docket fees, unlike in a Rule 65 petition. Rule 7 of RPEC has pared down the usually burdensome litigation expenses. 5. **Venue**. The certiorari petition can be filed with (a) the RTC exercising jurisdiction over the territory where the act was committed; (b) the Court of Appeals; and (c) the Supreme Court. Given the magnitude of the damage, the *kalikasan* petition can be filed directly with the Court of Appeals or the Supreme Court. The direct filing of a *kalikasan* petition will prune case delay. 6. **Exhaustion of administrative remedies**. This doctrine generally applies to a *certiorari* petition, unlike in a *kalikasan* petition. 7. **Period to file**. An aggrieved party has 60 days from notice of judgment or denial of a motion for reconsideration to file a certiorari petition, while a *kalikasan* petition is not subject to such limiting time lines. 8. **Discovery measures**. In a *certiorari* petition, discovery measures are not available unlike in a *kalikasan* petition. Resort to these measures will abbreviate proceedings. It is clear as day that a *kalikasan* petition provides more ample advantages to a suitor than a Rule 65 petition for certiorari. Taking into consideration the provisions of Rule 65 of the Rules of Court vis-à-vis Rule 7 of the RPEC, it should be at once apparent that in petitions like the instant petition involving unlawful act or omission causing environmental damage of such a magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces, Rule 7 of the RPEC is the applicable remedy. Thus, the vital, pivotal averment

is the illegal act or omission involving environmental damage of such a dimension that will prejudice a huge number of inhabitants in at least 2 or more cities and provinces. Without such assertion, then the proper recourse would be a petition under Rule 65, assuming the presence of the essential requirements for a resort to *certiorari*. It is, therefore, possible that subject matter of a suit which ordinarily would fall under Rule 65 is subsumed by the Rule 7 on *kalikasan* as long as such qualifying averment of environmental damage is present. I can say without fear of contradiction that a petition for a writ of *kalikasan* is a special version of a Rule 65 petition, but restricted in scope but providing a more expeditious, simplified and inexpensive remedy to the parties.

3. **ID.; ID.; ID.; *OPOSA* RULING SHOULD NOT BE ABANDONED.—** The dissent proposes the abandonment of the doctrinal pronouncement in *Oposa* bearing on the filing of suits in representation of others and of generations yet unborn, now embodied in Sec. 5 of the Environmental Rules. x x x I strongly disagree with the proposal. For one, *Oposa* carries on the tradition to further liberalize the requirement on *locus standi.* For another, the dissent appears to gloss over the fact that there are instances when statutes have yet to regulate an activity or the use and introduction of a novel technology in our jurisdiction and environs, and to provide protection against a violation of the people's right to life. Hence, requiring the existence of an "existing and clear legal right or basis" may only prove to be an imposition of a strict, if impossible, condition upon the parties invoking the protection of their right to life. And for a third, to require that there should be no possibility of any countervailing interests existing within the population represented or those that are yet to be born would likewise effectively remove the rule on citizens suits from our Environmental Rules or render it superfluous. No party could possibly prove, and no court could calculate, whether there is a possibility that other countervailing interests exist in a given situation. We should not lose sight of the fact that the impact of an activity to the environment, to our flora and fauna, and to the health of each and every citizen will never become an absolute certainty such that it can be predicted or calculated without error, especially if we are talking about generations yet unborn where we would obviously not have a

basis for said determination. Each organism, inclusive of the human of the species, reacts differently to a foreign body or a pollutant, thus, the need to address each environmental case on a case-to-case basis. Too, making sure that there are no countervailing interests in existence, especially those of populations yet unborn, would only cause delays in the resolution of an environmental case as this is a gargantuan, if not well-nigh impossible, task. It is for the same reason that the rule on *res judicata* should not likewise be applied to environmental cases with the same degree of rigidity observed in ordinary civil cases, contrary to the dissent's contention. Suffice it to state that the highly dynamic, generally unpredictable, and unique nature of environmental cases precludes Us from applying the said principle in environmental cases. Lastly, the dissent's proposition that a "citizen suit should only be allowed when there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary" is a pointless condition to be latched onto the RPEC. While the existence of an emergency provides a reasonable basis for allowing another person personally unaffected by an environmental accident to secure relief from the courts in representation of the victims thereof, it is my considered view that We need not limit the availability of a citizen's suit to such extreme situation. The true and full extent of an environmental damage is difficult to fully comprehend, much so to predict. Considering the dynamics of nature, where every aspect thereof is interlinked, directly or indirectly, it can be said that a negative impact on the environment, though at times may appear minuscule at one point, may cause a serious imbalance to our environs in the long run. And it is not always that this imbalance immediately surfaces. In some instances, it may take years before we realize that the deterioration is already serious and possibly irreparable, just as what happened to the Manila Bay where decades of neglect, if not sheer citizen and bureaucratic neglect, ultimately resulted in the severe pollution of the Bay. To my mind, the imposition of the suggested conditions would virtually render the provisions on citizen's suit a pure jargon, a useless rule, in short.

LEONEN, *J.*, *concurring and dissenting opinion*:

1. **REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; PETITION FOR ISSUANCE OF A WRIT OF KALIKASAN*;* THE PETITION WAS NOT BROUGHT BY THE PROPER PARTIES; TO ALLOW CITIZEN'S SUITS TO ENFORCE ENVIRONMENTAL RIGHTS OF OTHERS INCLUDING FUTURE GENERATIONS IS DANGEROUS; REASONS, EXPLAINED.—** Only real parties in interest may prosecute and defend actions. x x x A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect. He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced." In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest. The term "interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved." The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest. A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another. x x x To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim." The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest. In citizen's suits filed under the Rules of Procedure for Environmental Cases, the real parties in interest are the minors and the generations yet unborn. x x x The expansion of what constitutes "real party in interest" to include

minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran*. This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of country's natural resources. To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons: *First,* they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second,* varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third,* automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter. In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented. Thus, minors and future generations will be barred from litigating their interests in the future, however different it is from what was approximated for them by the persons who alleged to represent them. This may weaken our future generations' ability to decide and argue for themselves based on the circumstances and concerns that are actually present in their time. Expanding the scope of who may be real parties in interest in environmental cases to include minors and generations yet unborn "opened a dangerous practice of binding parties who are yet incapable of making choices for themselves, either due to minority or the sheer fact that they do not yet exist." x x x This case quintessentially reveals the dangers of unrestricted standing to bring environmental cases as class suits. The lack of preparation and skill by petitioners endangered the parties they sought to represent and even foreclosed the remedies of generations yet unborn.

2. **ID.; ID.; ID.; THE RULING IN *OPOSA* SHOULD BE REVISITED; COURTS SHOULD ENSURE THAT THE PERSONS BRINGING THE CLASS SUIT ARE TRULY REPRESENTATIVE OF THE INTEREST OF THE PERSONS THEY PURPORT TO REPRESENT.—** This court's ruling in *Oposa* should, x x x be abandoned or at least should be limited to [certain] situations x x x [E]nvironmental damage or injury is experienced by each person differently in degree and in nature depending on the circumstances. Therefore, injuries suffered by the persons brought as party to the class suit may not actually be common to all. The representation of the persons instituting the class suit ostensibly on behalf of others becomes doubtful. Hence, courts should ensure that the persons bringing the class suit are truly representative of the interests of the persons they purport to represent. In addition, since environmental cases are technical in nature, persons who assert environment-related rights must be able to show that they are capable of bringing "reasonably cogent, rational, scientific, well-founded arguments" as a matter of fairness to those they say they represent. Their beneficiaries would expect that they would argue for their interests in the best possible way. The court should examine the cogency of a petitioner's or complainant's cause by looking at the allegations and arguments in the complaint or petition. Their allegations and arguments must show at the minimum the scientific cause and effect relationship between the act complained of and the environmental effects alleged. The threat to the environment must be clear and imminent and "of such magnitude" such that inaction will certainly redound to ecological damage.

3. **ID.; ID.; ID.; REQUISITES BEFORE A PARTY MAY BE ALLOWED TO FILE A PETITION FOR ISSUANCE OF A WRIT OF KALIKASAN.—** [T]he standing of the parties filing a Petition for the Issuance of a Writ of Kalikasan may be granted when there is adequate showing that: (a) the suing party has a direct and substantial interest; (b) there is a cogent legal basis for the allegations and arguments; and (c) the person suing has sufficient knowledge and is capable of presenting all the facts that are involved including the scientific basis.

4. **ID.; ID.; ID.; A PETITION FOR ISSUANCE OF A WRIT OF KALIKASAN IS NOT THE PROPER REMEDY TO RAISE**

THE DEFECT IN THE ISSUANCE OF AN ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC).— [A] Petition for the Issuance of a Writ of Kalikasan is not the proper remedy to raise this defect in courts. ECCs issued by the Department of Environment and Natural Resources may be the subject of a motion for reconsideration with the Office of the Secretary. The Office of the Secretary may inform himself or herself of the science necessary to evaluate the grant or denial of an ECC by commissioning scientific advisers or creating a technical panel of experts. The same can be done at the level of the Office of the President where the actions of the Office of the Secretary of the DENR may be questioned. It is only after this exhaustion of administrative remedies which embeds the possibility of recruiting technical advice that judicial review can be had of the legally cogent standards and processes that were used. A Petition for a Writ of Kalikasan filed directly with this court raising issues relating to the Environmental Compliance Certificate or compliance with the Environmental Impact Assessment Process denies the parties the benefit of a fuller technical and scientific review of the premises and conditions imposed on a proposed project. If given due course, this remedy prematurely compels the court to exercise its power to review the standards used without exhausting all the administrative forums that will allow the parties to bring forward their best science. Rather than finding the cogent and reasonable balance to protect our ecologies, courts will only rely on our own best guess of cause and effect. We substitute our judgement for the science of environmental protection prematurely. Besides, the extraordinary procedural remedy of a Writ of Kalikasan cannot supplant the substantive rights involved in the Environmental Impact Assessment Process.

5. **ID.; ID.; ID.; ID.; AN ECC ISSUED WITHOUT A CORRESPONDING ENVIRONMENTAL IMPACT STATEMENT (EIS) IS INVALID.—** The issuance of an ECC without a corresponding environmental impact statement is not valid. Section 4 of Presidential Decree No. 1151 specifically requires the filing of environmental impact statements for every action that significantly affects environmental quality. Presidential Decree No. 1586, the law being implemented by the IRR, recognizes and is enacted based

on this requirement. Presidential Decree Nos. 1151 and 1586 do not authorize the Department of Environment and Natural Resources to allow exemptions to this requirement in the guise of amended project specifications. The only exception to the environmental impact statement requirement is when the project is not declared as environmentally critical, as provided later in Presidential Decree No. 1586 x x x Since fossil-fuelled power plants are already declared as environmentally critical projects in Proclamation No. 2146, an environmental impact statement is required. An EPMRP or a project description is not enough. An EPMRP and a project description are different from an environmental impact statement. The IRR itself describes the differences between the features of each documentation, as well as each's appropriate uses. The most detailed among the three is the environmental impact statement, which is required under the law for all environmentally critical projects. An environmental impact statement is a document of scientific opinion "that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment." It is predictive to an acceptable degree of certainty. It is an assurance that the proponent has understood all of the environmental impacts and that the measures it proposed to mitigate are both effective and efficient. x x x Not all the details required in an environmental impact statement can be found in an EPRMP. x x x An EPRMP is not a comprehensive study of environmental impacts, unlike an environmental impact statement. It is, in essence, a description of the project and documentation of environmental performance. Based on Section 5.2.5 of the IRR, it contains no identification of critical issues. There is also no assessment of the environmental impact and risks that the project may cause. x x x Presidential Decree Nos. 1151 and 1586 require an EIS for every project that will substantially affect our environment. These laws do not exempt amended projects from the EIS requirement. The ponencia's finding presumes that for purposes of compliance with this EIS requirement, the project as originally described was identical with the project after the amendment such that no new EIS was necessary to determine if the environmental impact would be different after the amendment. This is a dangerous and premature conclusion. Any finding that the original project and the modified project are the same or different from each other in terms of environmental

impact is itself a conclusion that must have scientific basis. Thus, to determine the environmental impact of projects, a different EIS should be submitted to reflect substantial modifications. Our law requires the EIS for a purpose. It ensures that business proponents are sufficiently committed to mitigate the full environmental impacts of their proposed projects. It also ensures that the proposed mitigating measures to be applied are appropriate for the operations of an environmentally critical project. Dispensing with the appropriate EIS encourages businesses to treat the EIS requirement as a mere formality that may be obtained and later conveniently amend without the need to conduct the appropriate studies. It discourages full responsibility and encourages businesses to resort to expedient measures to secure the proper environmental clearances.

6. **ID.; ID.; ID.; ID.; DENR'S ISSUANCE OF THE ECC IS INDEPENDENT FROM THE CONSULTATION AND CONSENT REQUIREMENTS UNDER THE LOCAL GOVERNMENT CODE; ISSUANCE OF THE ECC DOES NOT BIND THE LOCAL GOVERNMENT UNIT TO GIVE ITS CONSENT TO THE PROJECT.—** Although Section 26 of the Local Government Code requires "prior consultation" with local government units, organizations, and sectors, it does not state that such consultation is a requisite for the issuance of an ECC. Section 27 of the Local Government Code provides instead that consultation, together with the consent of the local government is a requisite for the **implementation** of the project. This shows that the issuance of the ECC is independent from the consultation and consent requirements under the Local Government Code. x x x Further, the results of the consultations under Sections 26 and 27 do not preclude the local government from taking into consideration concerns other than compliance with the environmental standards. Section 27 does not provide that the local government's prior approval must be based only on environmental concerns. It may be issued in light of its political role and based on its determination of what is economically beneficial for the local government unit. The issuance of the ECC, therefore, does not guarantee that all other permits for a project will be granted. It does not bind the local government unit to give its consent for the project. Both are necessary prior to a project's implementation.

7. ID.; ID.; ID.; ID.; ISSUANCE OF A CERTIFICATE OF NON-OVERLAP (CNO) UNDER THE INDIGENOUS PEOPLES' RIGHT ACT (R.A. 8371) IS INDEPENDENT FROM ISSUANCE OF AN ECC.— [T]he requirement of certificate of non-overlap under Section 59 of the Indigenous Peoples' Rights Act is independent from the issuance of an ECC. This requirement is a property issue. It is not related to environmental concerns under the Department of Environment and Natural Resources' jurisdiction.

8. ID.; ID.; ID.; ID.; POWER OF THE LOCAL GOVERNMENT UNIT TO GIVE CONSENT TO THE POWER PLANT PROJECT WITHIN THE SUBIC BAY METROPOLITAN AUTHORITY (SBMA); SBMA HAS NO AUTHORITY TO SUPPLANT THE POWERS OF THE LOCAL GOVERNMENT UNIT.— The question relating to the validity of the agreement between the SBMA and RP Energy is independent from the questions relating to whether the proper permits have been issued as well as whether the consent of the local government units have been properly secured. The ponencia makes the claim that the SBMA's power to approve or disapprove projects in territories covered by the SBMA is superior over the local government units.' x x x I disagree. Interpreted this way, this provision may not be in accordance with our Constitution. It violates the provisions relating to the President's supervision over local governments and the principle of local government autonomy. It is our basic policy to ensure the local autonomy of our local government units. Under the Constitution, these local government units include only provinces, cities, municipalities, barangays, and the autonomous regions of Muslim Mindanao and the Cordilleras. Provinces, cities, municipalities, and political subdivisions are created by law based on indicators such as income, population, and land area. Barangays are created through ordinances. Aside from the law or ordinance creating them, a local government unit cannot be created without the "approval by a majority of the votes cast in a plebiscite in the political units directly affected." The Subic Bay Metropolitan Authority is not a local government unit. It is a corporate body created by a law. No plebiscite or income, land area, and population requirements need to be reached for its creation. SBMA is merely the implementing arm of the Bases Conversion Development Authority, which

is under the President's control and supervision. It does not substitute for the President. It is not even the alter ego of the Chief Executive. x x x Section 14 of Republic Act No. 7227 cannot be interpreted so as to grant the Subic Bay Metropolitan Authority the prerogative to supplant the powers of the local government units. Local autonomy ensures that local government units can fully developed as self-reliant communities. The evolution of their capabilities to respond to the needs of their communities is constitutionally guaranteed. In its implementation and as a statutory policy, national agencies must consult the local government units regarding projects or programs to be implemented in their jurisdictions. x x x Thus, Republic Act No. 7227 has not granted the SBMA with powers superior to those of local government units. The power of local governments that give consent to national government projects has not been supplanted.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Redondo Peninsula Energy, Inc.

James Mark Terry L. Ridon for Hon. Teodoro A. Casiño, *et al*.

Von Rodriguez and Melvin L. Varias for Subic Bay Metropolitan Authority.

D E C I S I O N

DEL CASTILLO, *J*.:

Before this Court are consolidated Petitions for Review on *Certiorari*[1] assailing the Decision[2] dated January 30, 2013 and the Resolution[3] dated May 22, 2013 of the Court of Appeals

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[1] *Rollo* (G.R. No. 207257), pp. 122-153; *rollo* (G.R. No. 207276), Volume I, pp. 13-105; *rollo* (G.R. 207282), pp. 2-50; and *rollo* (G.R. No. 207366), pp. 117-149.

[2] *Rollo* (G.R. No. 207257), pp. 158-258; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang.

[3] *Id*. at 259-266.

(CA) in CA-G.R. SP No. 00015, entitled *"Hon. Teodoro A. Casiño, et al. v. Hon. Ramon Jesus P. Paje, et al."*

Factual Antecedents

In February 2006, Subic Bay Metropolitan Authority (SBMA), a government agency organized and established under Republic Act No. (RA) 7227,[4] and Taiwan Cogeneration Corporation (TCC) entered into a Memorandum of Understanding (MOU) expressing their intention to build a power plant in Subic Bay which would supply reliable and affordable power to Subic Bay Industrial Park (SBIP).[5]

On July 28, 2006, SBMA and TCC entered into another MOU, whereby TCC undertook to build and operate a coal-fired power plant.[6] In the said MOU, TCC identified 20 hectares of land at *Sitio* Naglatore, Mt. Redondo, Subic Bay Freeport Zone (SBFZ) as the suitable area for the project and another site of approximately 10 hectares to be used as an ash pond.[7] TCC intends to lease the property from SBMA for a term of 50 years with rent fixed at $3.50 per square meter, payable in 10 equal 5-year installments.[8]

On April 4, 2007, the SBMA Ecology Center issued SBFZ Environmental Compliance Certificate (ECC) No. EC-SBFZ-ECC-69-21-500 in favor of Taiwan Cogeneration International Corporation (TCIC), a subsidiary of TCC,[9] for the construction, installation, and operation of 2x150-MW Circulating Fluidized Bed (CFB) Coal-Fired Thermal Power Plant at *Sitio* Naglatore.[10]

On June 6, 2008, TCC assigned all its rights and interests under the MOU dated July 28, 2006 to Redondo Peninsula

[4] The Bases Conversion and Development Act of 1992.

[5] *Rollo* (G.R. No. 207257), p. 210.

[6] *Id*.

[7] *Id*. at 210-211.

[8] *Id*. at 159.

[9] *Id*.

[10] *Id*. at 211.

Energy, Inc. (RP Energy),[11] a corporation duly organized and existing under the laws of the Philippines with the primary purpose of building, owning, and operating power plants in the Philippines, among others.[12] Accordingly, an Addendum to the said MOU was executed by SBMA and RP Energy.[13]

RP Energy then contracted GHD Pty, Ltd. (GHD) to prepare an Environmental Impact Statement (EIS) for the proposed coal-fired power plant and to assist RP Energy in applying for the issuance of an ECC from the Department of Environment and Natural Resources (DENR).[14]

On August 27, 2008, the *Sangguniang Panglungsod* of Olongapo City issued Resolution No. 131, Series of 2008, expressing the city government's objection to the coal-fired power plant as an energy source and urging the proponent to consider safer alternative sources of energy for Subic Bay.[15]

On December 22, 2008, the DENR, through former Secretary Jose L. Atienza, Jr., issued an ECC for the proposed 2x150-MW coal-fired power plant.[16]

Sometime thereafter, RP Energy decided to include additional components in its proposed coal-fired power plant. Due to the changes in the project design, which involved the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line,[17] RP Energy requested the DENR Environmental Management Bureau (DENR-EMB) to amend its ECC.[18] In support of its

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[11] *Id*.

[12] *Rollo* (G.R. No. 207276), Volume I, p. 24.

[13] *Rollo* (G.R. No. 207257), p. 160.

[14] *Id*. at 167 and 211.

[15] *Id*. at 160.

[16] *Id*. at 213.

[17] *Id*. at 179.

[18] *Id*. at 167.

request, RP Energy submitted to the DENR-EMB an Environmental Performance Report and Management Plan (EPRMP), which was prepared by GHD.[19]

On June 8, 2010, RP Energy and SBMA entered into a Lease and Development Agreement (LDA) over a 380,004.456-square meter parcel of land to be used for building and operating the coal-fired power plant.[20]

On July 8, 2010, the DENR-EMB issued an amended ECC (first amendment) allowing the inclusion of additional components, among others.[21]

Several months later, RP Energy again requested the DENR-EMB to amend the ECC.[22] Instead of constructing a 2x150-MW coal-fired power plant, as originally planned, it now sought to construct a 1x300-MW coal-fired power plant.[23] In support of its request, RP Energy submitted a Project Description Report (PDR) to the DENR-EMB.[24]

On May 26, 2011, the DENR-EMB granted the request and further amended the ECC (second amendment).[25]

On August 1, 2011, the *Sangguniang Panglalawigan* of Zambales issued Resolution No. 2011-149, opposing the establishment of a coal-fired thermal power plant at *Sitio* Naglatore, Brgy. Cawag, Subic, Zambales.[26]

On August 11, 2011, the *Liga ng mga Barangay* of Olongapo City issued Resolution No. 12, Series of 2011, expressing its

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[19] *Id*.

[20] *Id*. at 211.

[21] *Id*. at 165.

[22] *Id*. at 216.

[23] *Id*. at 165.

[24] *Id* at 216.

[25] *Id*.

[26] *Id*. at 160.

strong objection to the coal-fired power plant as an energy source.[27]

On July 20, 2012, Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rolen C. Paulino, Hon. Eduardo Piano, Hon. James de los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and John Carlo delos Reyes (Casiño Group) filed before this Court a Petition for Writ of *Kalikasan* against RP Energy, SBMA, and Hon. Ramon Jesus P. Paje, in his capacity as Secretary of the DENR.[28]

On July 31, 2012, this Court resolved, among others, to: (1) issue a Writ of *Kalikasan*; and (2) refer the case to the CA for hearing and reception of evidence and rendition of judgment.[29]

While the case was pending, RP Energy applied for another amendment to its ECC (third amendment) and submitted another EPRMP to the DENR-EMB, proposing the construction and operation of a 2x300-MW coal-fired power plant.[30]

On September 11, 2012, the Petition for Writ of *Kalikasan* was docketed as CA-G.R. SP No. 00015 and raffled to the Fifteenth Division of the CA.[31] In the Petition, the Casiño Group alleged, among others, that the power plant project would cause grave environmental damage;[32] that it would adversely affect the health of the residents of the municipalities of Subic, Zambales,

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[27] *Id*.

[28] *Id*. at 159.

[29] *Id*.

[30] *Id*. at 179.

[31] *Id*. at 159.

[32] *Id*. at 163.

Morong, Hermosa, and the City of Olongapo;[33] that the ECC was issued and the LDA entered into without the prior approval of the concerned *sanggunians* as required under Sections 26 and 27 of the Local Government Code (LGC);[34] that the LDA was entered into without securing a prior certification from the National Commission on Indigenous Peoples (NCIP) as required under Section 59 of RA 8371 or the Indigenous Peoples' Rights Act of 1997 (IPRA Law);[35] that Section 8.3 of DENR Administrative Order No. 2003-30 (DAO 2003-30) which allows amendments of ECCs is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new EIS;[36] and that due to the nullity of Section 8.3 of DAO 2003-30, all amendments to RP Energy's ECC are null and void.[37]

On October 29, 2012, the CA conducted a preliminary conference wherein the parties, with their respective counsels, appeared except for Hon. Teodoro A. Casiño, Hon. Rafael V. Mariano, Hon. Emerencia A. De Jesus, Clemente G. Bautista, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and the SBMA.[38] The matters taken up during the preliminary conference were embodied in the CA's Resolution dated November 5, 2012, to wit:

I. ISSUES

A. Petitioners (Casiño Group)

1. Whether x x x the DENR Environmental Compliance Certificate ('ECC' x x x) in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project ('Power Plant,' x x x) and its amendment to 1x300 MW Power Plant, and the Lease and

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[33] *Id*.

[34] *Id*. at 161.

[35] *Id*. at 160-161.

[36] *Id*. at 162.

[37] *Id*.

[38] *Id*. at 170.

Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 ('IPRA Law,' x x x);

2. Whether x x x RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units ('LGUs,' x x x), pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;

3. Whether x x x Section 8.3 of DENR Administrative Order No. 2003-30 ('DAO No. 2003-30,' x x x) providing for the amendment of an ECC is null and void for being *ultra vires*; and

4. Whether x x x the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.

B. Respondent RP Energy

1. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked;

1.1 Whether x x x the same is valid until annulled;

2. Whether x x x petitioners exhausted their administrative remedies with respect to the amended ECC for the 1x300 MW Power Plant;

2.1 Whether x x x the instant Petition is proper;

3. Whether x x x RP Energy complied with all the procedures/ requirements for the issuance of the DENR ECC and its amendment;

3.1 Whether x x x a Certificate of Non-Overlap from the National Commission on Indigenous Peoples is applicable in the instant case;

4. Whether x x x the LGU's approval under Sections 26 and 27 of the Local Government Code is necessary for the issuance of the DENR ECC and its amendments, and what constitutes LGU approval;

5. Whether x x x there is a threatened or actual violation of environmental laws to justify the Petition;

5.1 Whether x x x the approved 1x300 MW Power Plant complied with the accepted legal standards on thermal

pollution of coastal waters, air pollution, water pollution, and acid deposits on aquatic and terrestrial ecosystems; and

6. Whether x x x the instant Petition should be dismissed for failure to comply with the requirements of proper verification and certification of non-forum shopping with respect to some petitioners.

C. Respondent DENR Secretary Paje

1. Whether x x x the issuance of the DENR ECC and its amendment in favor of RP Energy requires compliance with Section 59 of the IPRA Law, as well as Sections 26 and 27 of the Local Government Code;

2. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked in this proceeding; and

3. Whether x x x Section 8.3 of DAO No. 2003-30 is valid.

II. ADMISSIONS/DENIALS

Petitioners, through Atty. Ridon, admitted all the allegations in RP Energy's Verified Return, except the following:

1. paragraphs 1.4 to 1.7;
2. paragraphs 1.29 to 1.32; and
3. paragraphs 1.33 to 1.37.

Petitioners made no specific denial with respect to the allegations of DENR Secretary Paje's Verified Return. x x x

Respondent RP Energy proposed the following stipulations, which were all admitted by petitioners, through Atty. Ridon, viz:

1. The 1x300 MW Power Plant is not yet operational;

2. At present, there is no environmental damage;

3. The 1x300 MW Power Plant project is situated within the Subic Special Economic Zone; and

4. Apart from the instant case, petitioners have not challenged the validity of Section 8.3 of DAO No. 2003-30.

Public respondent DENR Secretary Paje did not propose any matter for stipulation.[39]

[39] *Id.* at 170-172.

Thereafter, trial ensued.

The Casiño Group presented three witnesses, namely: (1) Raymond V. Palatino, a two-term representative of the *Kabataan* Partylist in the House of Representatives;[40] (2) Alex C. Hermoso, the convenor of the Zambales-Olongapo City Civil Society Network, a director of the PREDA[41] Foundation, and a member of the Zambales Chapter of the *Kaya Natin* Movement and the Zambales Chapter of the People Power Volunteers for Reform;[42] and (3) Ramon Lacbain, the Vice-Governor of the Province of Zambales.[43]

RP Energy presented five witnesses, namely: (1) Junisse P. Mercado (Ms. Mercado), an employee of GHD and the Project Director of ongoing projects for RP Energy regarding the proposed power plant project;[44] (2) Juha Sarkki (Engr. Sarkki), a Master of Science degree holder in Chemical Engineering;[45] (3) Henry K. Wong, a degree holder of Bachelor of Science Major in Mechanical Engineering from Worcester Polytechnic Institute;[46] (4) Dr. Ely Anthony R. Ouano (Dr. Ouano), a licensed Chemical Engineer, Sanitary Engineer, and Environmental Planner in the Philippines;[47] and (5) David C. Evangelista (Mr. Evangelista), a Business Development Analyst working for RP Energy.[48]

SBMA, for its part, presented its Legal Department Manager, Atty. Von F. Rodriguez (Atty. Rodriguez).[49]

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[40] *Id*. at 173.

[41] People's Recovery Empowerment and Development Assistance

[42] *Rollo* (G.R. No. 207257), p. 175.

[43] *Id*.

[44] *Id*. at 178.

[45] *Id*. at 184.

[46] *Id*. at 187.

[47] *Id*. at 190.

[48] *Id*. at 195.

[49] *Id*. at 199.

The DENR, however, presented no evidence.[50]

Meanwhile, on October 31, 2012, a Certificate of Non-Overlap (CNO) was issued in connection with RP Energy's application for the 2x300-MW coal-fired power plant.[51]

On November 15, 2012, the DENR-EMB granted RP Energy's application for the third amendment to its ECC, approving the construction and operation of a 2x300-MW coal-fired power plant, among others.[52]

Ruling of the Court of Appeals

On January 30, 2013, the CA rendered a Decision denying the privilege of the writ of *kalikasan* and the application for an environment protection order due to the failure of the Casiño Group to prove that its constitutional right to a balanced and healthful ecology was violated or threatened.[53] The CA likewise found no reason to nullify Section 8.3 of DAO No. 2003-30. It said that the provision was not *ultra vires,* as the express power of the Secretary of the DENR, the Director and Regional Directors of the EMB to issue an ECC impliedly includes the incidental power to amend the same.[54] In any case, the CA ruled that the validity of the said section could not be collaterally attacked in a petition for a writ of *kalikasan*.[55]

Nonetheless, the CA resolved to invalidate the ECC dated December 22, 2008 for non-compliance with Section 59 of the IPRA Law[56] and Sections 26 and 27 of the LGC[57] and for failure of Luis Miguel Aboitiz (Mr. Aboitiz), Director of RP

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[50] *Id*. at 203.

[51] *Id*. at 178.

[52] *Id*. at 198.

[53] *Id*. at 239-247.

[54] *Id*. at 236-239.

[55] *Id*. at 239.

[56] *Id*. at 222-228.

[57] *Id*. at 230-236.

Energy, to affix his signature in the Sworn Statement of Full Responsibility, which is an integral part of the ECC.[58] Also declared invalid were the ECC first amendment dated July 8, 2010 and the ECC second amendment dated May 26, 2011 in view of the failure of RP Energy to comply with the restrictions set forth in the ECC, which specifically require that "any expansion of the project beyond the project description or any change in the activity x x x shall be subject to a new Environmental Impact Assessment."[59] However, as to the ECC third amendment dated November 15, 2012, the CA decided not to rule on its validity since it was not raised as an issue during the preliminary conference.[60]

The CA also invalidated the LDA entered into by SBMA and RP Energy as it was issued without the prior consultation and approval of all the *sanggunians* concerned as required under Sections 26 and 27 of the LGC,[61] and in violation of Section 59, Chapter VIII of the IPRA Law, which enjoins all departments and other governmental agencies from granting any lease without a prior certification that the area affected does not overlap with any ancestral domain.[62] The CA noted that no CNO was secured from the NCIP prior to the execution of the LDA,[63] and that the CNO dated October 31, 2012 was secured during the pendency of the case and was issued in connection with RP Energy's application for a 2x300-MW coal-fired power plant.[64]

Thus, the CA disposed of the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered DENYING the privilege of the writ of *kalikasan* and the application

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[58] *Id*. at 213-216.

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

[60] *Id*. at 213.

[61] *Id*. at 230-236.

[62] *Id*. at 222-230.

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

[64] *Id*.

for an environmental protection order. The prayer to declare the nullity of Section 8.3 of the DENR Administrative Order No. 2003-30 for being *ultra vires* is DENIED; and the following are all declared INVALID:

1. The Environmental Compliance Certificate (ECC Ref. Code: 0804-011-4021) dated 22 December 2008 issued in favor of respondent Redondo Peninsula Energy, Inc. by former Secretary Jose L. Atienza, Jr. of the Department of Environment and Natural Resources;

2. The ECC first amendment dated 08 July 2010 and ECC second amendment dated 26 May 2011, both issued in favor of respondent Redondo Peninsula Energy, Inc. by OIC Director Atty. Juan Miguel T. Cuna of the Department of Environment and Natural Resources, Environmental Management Bureau; and

3. The Lease and Development Agreement dated 08 June 2010 entered into by respondents Subic Bay Metropolitan Authority and Redondo Peninsula Energy, Inc. involving a parcel of land consisting of 380,004.456 square meters.

SO ORDERED.[65]

The DENR and SBMA separately moved for reconsideration.[66] RP Energy filed a Motion for Partial Reconsideration,[67] attaching thereto a signed Statement of Accountability.[68] The Casiño Group, on the other hand, filed Omnibus Motions for Clarification and Reconsideration.[69]

On May 22, 2013, the CA issued a Resolution[70] denying the aforesaid motions for lack of merit. The CA opined that the reliefs it granted in its Decision are allowed under Section 15, Rule 7 of the Rules of Procedure for Environmental Cases as

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

[66] *Id*. at 260.

[67] *Id*.

[68] *Id*. at 262.

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

[70] *Id*. at 259-266.

the reliefs enumerated therein are broad, comprehensive, and non-exclusive.[71] In fact, paragraph (e) of the said provision allows the granting of "such other reliefs" in consonance with the objective, purpose, and intent of the Rules.[72] SBMA's contention that the stoppage of a project for non-compliance with Section 59 of the IPRA Law may only be done by the indigenous cultural communities or indigenous peoples was also brushed aside by the CA as the Casiño Group did not file a case under the IPRA Law but a Petition for a Writ of *Kalikasan*, which is available to all natural or juridical persons whose constitutional right to a balanced and healthful ecology is violated, or threatened to be violated.[73] As to RP Energy's belated submission of a signed Statement of Accountability, the CA gave no weight and credence to it as the belated submission of such document, long after the presentation of evidence of the parties had been terminated, is not in accord with the rules of fair play.[74] Neither was the CA swayed by the argument that the omitted signature of Luis Miguel Aboitiz is a mere formal defect, which does not affect the validity of the entire document.[75] The dispositive portion of the Resolution reads:

> **WHEREFORE,** premises considered, respondents Subic Bay Metropolitan Authority's Motion for Reconsideration dated 18 February 2013, Department of Environment and Natural Resources Secretary Ramon Jesus P. Paje's Motion for Reconsideration dated 19 February 2013, and Redondo Peninsula Energy, Inc.'s Motion for Partial Reconsideration dated 22 February 2013, as well as petitioners' Omnibus Motions for Clarification and Reconsideration dated 25 February 2013, are all DENIED for lack of merit.
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> **SO ORDERED.**[76]

Unsatisfied, the parties appealed to this Court.

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[71] *Id*. at 261.

[72] *Id*.

[73] *Id*. at 262.

[74] *Id*. at 264.

[75] *Id*. at 262-263.

[76] *Id*. at 265.

The Casiño Group's arguments

The Casiño Group, in essence, argues that it is entitled to a Writ of *Kalikasan* as it was able to prove that the operation of the power plant would cause environmental damage and pollution, and that this would adversely affect the residents of the provinces of Bataan and Zambales, particularly the municipalities of Subic, Morong, Hermosa, and the City of Olongapo. It cites as basis RP Energy's EIS, which allegedly admits that acid rain may occur in the combustion of coal;[77] that the incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particles from plant operations;[78] and that increased sulfur oxides (SOx) and nitrogen oxides (NOx) emissions may occur during plant operations.[79] It also claims that when the SBMA conducted Social Acceptability Policy Consultations with different stakeholders on the proposed power plant, the results indicated that the overall persuasion of the participants was a clear aversion to the project due to environmental, health, economic and socio-cultural concerns.[80] Finally, it contends that the ECC third amendment should also be nullified for failure to comply with the procedures and requirements for the issuance of the ECC.[81]

The DENR's arguments

The DENR imputes error on the CA in invalidating the ECC and its amendments, arguing that the determination of the validity of the ECC as well as its amendments is beyond the scope of a Petition for a Writ of *Kalikasan*.[82] And even if it is within the scope, there is no reason to invalidate the ECC and its amendments as these were issued in accordance with DAO No. 2003-30.[83]

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[77] *Rollo* (G.R. No. 207282), p. 26.

[78] *Id.* at 27.

[79] *Id.* at 27-28.

[80] *Id.* at 29-36.

[81] *Id.* at 39-44.

[82] *Rollo* (G.R. No. 207257), pp. 133-137.

[83] *Id.* at 148-152.

The DENR also insists that contrary to the view of the CA, a new EIS was no longer necessary since the first EIS was still within the validity period when the first amendment was requested, and that this is precisely the reason RP Energy was only required to submit an EPRMP in support of its application for the first amendment.[84] As to the second amendment, the DENR-EMB only required RP Energy to submit documents to support the proposed revision considering that the change in configuration of the power plant project, from 2x150MW to 1x300MW, was not substantial.[85] Furthermore, the DENR argues that no permits, licenses, and/or clearances from other government agencies are required in the processing and approval of the ECC.[86] Thus, non-compliance with Sections 26 and 27 of the LGC as well as Section 59 of the IPRA Law is not a ground to invalidate the ECC and its amendments.[87] The DENR further posits that the ECC is not a concession, permit, or license but is a document certifying that the proponent has complied with all the requirements of the EIS System and has committed to implement the approved Environmental Management Plan.[88] The DENR invokes substantial justice so that the belatedly submitted certified true copy of the ECC containing the signature of Mr. Aboitiz on the Statement of Accountability may be accepted and accorded weight and credence.[89]

SBMA's arguments

For its part, SBMA asserts that since the CA did not issue a Writ of *Kalikasan*, it should not have invalidated the LDA and that in doing so, the CA acted beyond its powers.[90] SBMA likewise puts in issue the legal capacity of the Casiño Group to

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[84] *Id*. at 150-151.

[85] *Id*. at 151-152.

[86] *Id*. at 141.

[87] *Id*. at 138-145.

[88] *Id*. at 140.

[89] *Id*. at 145-148.

[90] *Rollo* (G.R. No. 207366), pp. 134-137.

impugn the validity of the LDA[91] and its failure to exhaust administrative remedies.[92] In any case, SBMA contends that there is no legal basis to invalidate the LDA as prior consultation under Sections 26 and 27 of the LGC is not required in this case considering that the area is within the SBFZ.[93] Under RA 7227, it is the SBMA which has exclusive jurisdiction over projects and leases within the SBFZ and that in case of conflict between the LGC and RA 7227, it is the latter, a special law, which must prevail.[94] Moreover, the lack of prior certification from the NCIP is also not a ground to invalidate a contract.[95] If at all, the only effect of non-compliance with the said requirement under Section 59 of the IPRA Law is the stoppage or suspension of the project.[96] Besides, the subsequent issuance of a CNO has cured any legal defect found in the LDA.[97]

RP Energy's arguments

RP Energy questions the propriety of the reliefs granted by the CA considering that it did not issue a writ of *kalikasan* in favor of the Casiño Group.[98] RP Energy is of the view that unless a writ of *kalikasan* is issued, the CA has no power to grant the reliefs prayed for in the Petition.[99] And even if it does, the reliefs are limited to those enumerated in Section 15, Rule 7 of the Rules of Procedure for Environmental Cases and that the phrase "such other reliefs" in paragraph (e) should be limited only to those of the same class or general nature as the

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[91] *Id*. at 136-137 and 140-141.

[92] *Id*. at 141-142.

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

[94] *Id*.

[95] *Id*. at 138-139.

[96] *Id*.

[97] *Id*.

[98] *Rollo* (G.R. No. 207276), Volume I, pp. 32-37.

[99] *Id*. at 37-41.

four other reliefs enumerated.[100] As to the validity of the LDA, the ECC and its amendments, the arguments of RP Energy are basically the same arguments interposed by SBMA and the DENR. RP Energy maintains that the ECC and its amendments were obtained in compliance with the DENR rules and regulations;[101] that a CNO is not necessary in the execution of an LDA and in the issuance of the ECC and its amendments;[102] and that prior approval of the local governments, which may be affected by the project, are not required because under RA 7227, the decision of the SBMA shall prevail in matters affecting the Subic Special Economic Zone (SSEZ), except in matters involving defense and security.[103] RP Energy also raises the issue of non-exhaustion of administrative remedies on the part of the Casiño Group.[104]

Preliminaries

This case affords us an opportunity to expound on the nature and scope of the writ of *kalikasan*. It presents some interesting questions about law and justice in the context of environmental cases, which we will tackle in the main body of this Decision.

But we shall first address some preliminary matters, in view of the manner by which the appellate court disposed of this case.

The Rules on the Writ of *Kalikasan*,[105] which is Part III of the Rules of Procedure for Environmental Cases,[106] was issued by the Court pursuant to its power to promulgate rules for the protection and enforcement of constitutional rights,[107] in particular,

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[100] *Id*. at 41-43.

[101] *Id*. at 52-77.

[102] *Id*. at 78-87.

[103] *Id*. at 87-102.

[104] *Id*. at 44-52.

[105] Rule 7, Part III, Rules of Procedure for Environmental Cases

[106] A.M. No. 09-6-8-SC dated April 13, 2010.

[107] ARTICLE VIII, Section 5(5) of the Constitution provides:

the individual's right to a balanced and healthful ecology.[108] Section 1 of Rule 7 provides:

> Section 1. *Nature of the writ.* - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries.[109] It is intended "to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short"[110] and seeks "to address the potentially exponential nature of large-scale ecological threats."[111]

Section 5. The Supreme Court shall have the following powers:

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5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[108] Article II, Section 16, Constitution.

[109] The Rationale and Annotation to the Rules of Procedure for Environmental Cases issued by the Supreme Court [hereafter *Annotation*], p. 133.

[110] *Annotation*, p. 78.

[111] *Annotation*, p. 78-79.

Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.

If the petitioner successfully proves the foregoing requisites, the court shall render judgment granting the privilege of the writ of *kalikasan*. Otherwise, the petition shall be denied. If the petition is granted, the court may grant the reliefs provided for under Section 15 of Rule 7, to wit:

Section 15. *Judgment.* - Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

(a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;

(b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;

(c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;

(d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

It must be noted, however, that the above enumerated reliefs are non-exhaustive. The reliefs that may be granted under the writ are broad, comprehensive and non-exclusive.[112]

Prescinding from the above, the DENR, SBMA and RP Energy are one in arguing that the reliefs granted by the appellate court, *i.e.* invalidating the ECC and its amendments, are improper because it had denied the Petition for Writ of *Kalikasan* upon a finding that the Casiño Group failed to prove the alleged environmental damage, actual or threatened, contemplated under the Rules.

Ordinarily, no reliefs could and should be granted. But the question may be asked, could not the appellate court have granted the Petition for Writ of *Kalikasan* on the ground of the invalidity of the ECC for failure to comply with certain laws and rules?

This question is the starting point for setting up the framework of analysis which should govern writ of *kalikasan* cases.

In their Petition for Writ of *Kalikasan*,[113] the Casiño Group's allegations, relative to the actual or threatened violation of the constitutional right to a balanced and healthful ecology, may be grouped into two.

The first set of allegations deals with the actual environmental damage that will occur if the power plant project is implemented. The Casiño Group claims that the construction and operation of the power plant will result in (1) thermal pollution of coastal waters, (2) air pollution due to dust and combustion gases, (3)

[112] *Annotation*, p. 139.

[113] *Rollo* (G.R. 207282), pp. 2-50.

water pollution from toxic coal combustion waste, and (4) acid deposition in aquatic and terrestrial ecosystems, which will adversely affect the residents of the Provinces of Bataan and Zambales, particularly the Municipalities of Subic, Morong and Hermosa, and the City of Olongapo.

The second set of allegations deals with the failure to comply with certain laws and rules governing or relating to the issuance of an ECC and amendments thereto. The Casiño Group claims that the ECC was issued in violation of (1) the DENR rules on the issuance and amendment of an ECC, particularly, DAO 2003-30 and the Revised Procedural Manual for DAO 2003-30 (Revised Manual), (2) Section 59 of the IPRA Law, and (3) Sections 26 and 27 of the LGC. In addition, it claims that the LDA entered into between SBMA and RP Energy violated Section 59 of the IPRA Law.

As to the first set of allegations, involving actual damage to the environment, it is not difficult to discern that, if they are proven, then the Petition for Writ of *Kalikasan* could conceivably be granted.

However, as to the second set of allegations, a nuanced approach is warranted. The power of the courts to nullify an ECC existed even prior to the promulgation of the Rules on the Writ of *Kalikasan* for judicial review of the acts of administrative agencies or bodies has long been recognized[114] subject, of course, to the doctrine of exhaustion of administrative remedies.[115]

But the issue presented before us is not a simple case of reviewing the acts of an administrative agency, the DENR, which issued the ECC and its amendments. The challenge to the validity of the ECC was raised in the context of a writ of *kalikasan* case. The question then is, can the validity of an ECC be challenged *via* a writ of *kalikasan*?

We answer in the affirmative subject to certain qualifications.

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[114] See Rule 43, Rules of Court.

[115] See *Bangus Fry Fisherfolk v. Lanzanas*, 453 Phil. 479, 494 (2003).

As earlier noted, the writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. This must be so if we are to preserve the noble and laudable purposes of the writ against those who seek to abuse it.

An example of a defect or an irregularity in the issuance of an ECC, which could conceivably warrant the granting of the extraordinary remedy of the writ of *kalikasan*, is a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently rely on such substantially defective or fraudulent ECC in approving the implementation of the project.

To repeat, in cases of defects or irregularities in the issuance of an ECC, it is not sufficient to merely allege such defects or irregularities, but to show a causal link or reasonable connection with the environmental damage of the magnitude contemplated under the Rules. In the case at bar, no such causal link or reasonable connection was shown or even attempted relative to the aforesaid second set of allegations. It is a mere listing of the perceived defects or irregularities in the issuance of the ECC. This would have been sufficient reason to disallow the resolution of such issues in a writ of *kalikasan* case.

However, inasmuch as this is the first time that we lay down this principle, we have liberally examined the alleged defects or irregularities in the issuance of the ECC and find that there is only one group of allegations, relative to the ECC, that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules. This is with respect to the allegation that there was no environmental impact assessment relative to the first and second amendments to the subject ECC. If this were true, then the implementation of the project can conceivably actually violate or threaten to violate the right to a healthful and balanced ecology of the inhabitants near the vicinity of the power plant. Thus, the resolution of such an issue could conceivably be resolved in a writ of *kalikasan* case provided that the case does not violate, or is an exception to the doctrine of exhaustion of administrative remedies and primary jurisdiction.[116]

As to the claims that the issuance of the ECC violated the IPRA Law and LGC and that the LDA, likewise, violated the IPRA Law, we find the same not to be within the coverage of the writ of *kalikasan* because, assuming there was non-compliance therewith, no reasonable connection can be made to an actual or threatened violation of the right to a balanced and healthful ecology of the magnitude contemplated under the Rules.

To elaborate, the alleged lack of approval of the concerned *sanggunians* over the subject project would not lead to or is not reasonably connected with environmental damage but, rather, it is an affront to the local autonomy of LGUs. Similarly, the alleged lack of a certificate precondition that the project site does not overlap with an ancestral domain would not result in or is not reasonably connected with environmental damage but, rather, it is an impairment of the right of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains. These alleged violations could be the subject of appropriate remedies before the proper administrative bodies

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[116] It should be noted that the Rules on the Writ of *Kalikasan* were promulgated with due regard to the doctrine of exhaustion of administrative remedies and primary jurisdiction. (*Annotation*, p. 100).

(like the NCIP) or a separate action to compel compliance before the courts, as the case may be. However, the writ of *kalikasan* would not be the appropriate remedy to address and resolve such issues.

Be that as it may, we shall resolve both the issues proper in a writ of *kalikasan* case and those which are not, commingled as it were here, because of the exceptional character of this case. We take judicial notice of the looming power crisis that our nation faces. Thus, the resolution of all the issues in this case is of utmost urgency and necessity in order to finally determine the fate of the project center of this controversy. If we were to resolve only the issues proper in a writ of *kalikasan* case and dismiss those not proper therefor, that will leave such unresolved issues open to another round of protracted litigation. In any case, we find the records sufficient to resolve all the issues presented herein. We also rule that, due to the extreme urgency of the matter at hand, the present case is an exception to the doctrine of exhaustion of administrative remedies.[117] As we have often ruled, in exceptional cases, we can suspend the rules of procedure in order to achieve substantial justice, and to address urgent and paramount State interests vital to the life of our nation.

Issues

In view of the foregoing, we shall resolve the following issues:

1. Whether the Casiño Group was able to prove that the construction and operation of the power plant will cause grave environmental damage.

    1.1. The alleged thermal pollution of coastal waters, air pollution due to dust and combustion gases, water pollution from toxic coal combustion waste, and acid deposition to aquatic and terrestrial ecosystems that will be caused by the project.

[117] *Boracay Foundation v. The Province of Aklan,* G.R. No. 196870, June 26, 2012, 674 SCRA 555, 604.

1.2. The alleged negative environmental assessment of the project by experts in a report generated during the social acceptability consultations.

1.3. The alleged admissions of grave environmental damage in the EIS itself of the project.

2. Whether the ECC is invalid for lack of signature of Mr. Luis Miguel Aboitiz, as representative of RP Energy, in the Statement of Accountability of the ECC.

3. Whether the first and second amendments to the ECC are invalid for failure to undergo a new environmental impact assessment (EIA) because of the utilization of inappropriate EIA documents.

4. Whether the Certificate of Non-Overlap, under Section 59 of the IPRA Law, is a precondition to the issuance of an ECC and the lack of its prior issuance rendered the ECC invalid.

5. Whether the Certificate of Non-Overlap, under Section 59 of the IPRA Law, is a precondition to the consummation of the Lease and Development Agreement (LDA) between SBMA and RP Energy and the lack of its prior issuance rendered the LDA invalid.

6. Whether compliance with Section 27, in relation to Section 26, of the LGC (*i.e.*, approval of the concerned *sanggunian* requirement) is necessary prior to the implementation of the power plant project.

7. Whether the validity of the third amendment to the ECC can be resolved in this case.

Ruling

The parties to this case appealed from the decision of the appellate court pursuant to Section 16, Rule 7 of the Rules of Procedure for Environmental Cases, *viz*:

Section 16. *Appeal.* - Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for

reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. **The appeal may raise questions of fact**. (Emphasis supplied)

It is worth noting that the Rules on the Writ of *Kalikasan* allow the parties to raise, on appeal, questions of fact— and, thus, constitutes an exception to Rule 45 of the Rules of Court— because of the extraordinary nature of the circumstances surrounding the issuance of a writ of *kalikasan*.[118] Thus, we shall review both questions of law and fact in resolving the issues presented in this case.

We now rule on the above-mentioned issues in detail.

I.

Whether the Casiño Group was able to prove that the construction and operation of the power plant will cause grave environmental damage.

The alleged thermal pollution of coastal waters, air pollution due to dust and combustion gases, water pollution from toxic coal combustion waste, and acid deposition in aquatic and terrestrial ecosystems that will be caused by the project.

As previously noted, the Casiño Group alleged that the construction and operation of the power plant shall adversely affect the residents of the Provinces of Bataan and Zambales, particularly, the Municipalities of Subic, Morong and Hermosa, and the City of Olongapo, as well as the sensitive ecological balance of the area. Their claims of ecological damage may be summarized as follows:

1. *Thermal pollution of coastal waters*. Due to the discharge of heated water from the operation of the plant, they claim that the temperature of the affected bodies of

[118] *Annotation*, p. 140.

water will rise significantly. This will have adverse effects on aquatic organisms. It will also cause the depletion of oxygen in the water. RP Energy claims that there will be no more than a 3°C increase in water temperature but the Casiño Group claims that a 1°C to 2°C rise can already affect the metabolism and other biological functions of aquatic organisms such as mortality rate and reproduction.

2. *Air pollution due to dust and combustion gases*. While the Casiño Group admits that Circulating Fluidized Bed (CFB) Coal technology, which will be used in the power plant, is a clean technology because it reduces the emission of toxic gases, it claims that volatile organic compounds, specifically, polycyclic aromatic hydrocarbons (PAHs) will also be emitted under the CFB. PAHs are categorized as pollutants with carcinogenic and mutagenic characteristics. Carbon monoxide, a poisonous gas, and nitrous oxide, a lethal global warming gas, will also be produced.

3. *Water pollution from toxic coal combustion waste*. The waste from coal combustion or the residues from burning pose serious environmental risk because they are toxic and may cause cancer and birth defects. Their release to nearby bodies of water will be a threat to the marine ecosystem of Subic Bay. The project is located in a flood-prone area and is near three prominent seismic faults as identified by Philippine Institute of Volcanology and Seismology. The construction of an ash pond in an area susceptible to flooding and earthquake also undermines SBMA's duty to prioritize the preservation of the water quality in Subic Bay.

4. *Acid deposition in aquatic and terrestrial ecosystems*. The power plant will release 1,888 tons of nitrous oxides and 886 tons of sulfur dioxide per year. These oxides are responsible for acid deposition. Acid deposition directly impacts aquatic ecosystems. It is toxic to fish and other aquatic animals. It will also damage the forests near

> Subic Bay as well as the wildlife therein. This will threaten the stability of the biological diversity of the Subic Bay Freeport which was declared as one of the ten priority sites among the protected areas in the Philippines and the Subic Watershed and Forest Reserve. This will also have an adverse effect on tourism.[119]

In its January 30, 2013 Decision, the appellate court ruled that the Casiño Group failed to prove the above allegations.

We agree with the appellate court.

Indeed, the three witnesses presented by the Casiño Group are not experts on the CFB technology or on environmental matters. These witnesses even admitted on cross-examination that they are not competent to testify on the environmental impact of the subject project. What is wanting in their testimonies is their technical knowledge of the project design/implementation or some other aspects of the project, even those not requiring expert knowledge, vis-à-vis the significant negative environmental impacts which the Casiño Group alleged will occur. Clearly, the Casiño Group failed to carry the *onus* of proving the alleged significant negative environmental impacts of the project. In comparison, RP Energy presented several experts to refute the allegations of the Casiño Group.

As aptly and extensively discussed by the appellate court:

> Petitioners[120] presented three (3) witnesses, namely, Palatino, Hermoso, and Lacbain, all of whom are not experts on the CFB technology or even on environmental matters. Petitioners did not present any witness from Morong or Hermosa. Palatino, a former freelance writer and now a Congressman representing the Kabataan Partylist, with a degree of BS Education major in Social Studies, admitted that he is not a technical expert. Hermoso, a Director of the PREDA foundation which is allegedly involved on environmental concerns, and a member of Greenpeace, is not an expert on the matter subject of this case. He is a graduate of BS Sociology and a practicing

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[119] CA *rollo*, Volume I, pp. 41-47.

[120] Referred to as the Casiño Group in this case.

business director involved in social development and social welfare services. Lacbain, incumbent Vice-Governor of the Province of Zambales, an accounting graduate with a Master in Public Administration, was a former *Banco* Filipino teller, entertainment manager, disco manager, marketing manager and college instructor, and is also not an expert on the CFB technology. Lacbain also admitted that he is neither a scientist nor an expert on matters of the environment.

Petitioners cited various scientific studies or articles and websites culled from the internet. However, the said scientific studies and articles including the alleged Key Observations and Recommendations on the EIS of the Proposed RPE Project by Rex Victor O. Cruz (Exhibit "DDDDD") attached to the Petition, were not testified to by an expert witness, and are basically hearsay in nature and cannot be given probative weight. The article purportedly written by Rex Victor O. Cruz was not even signed by the said author, which fact was confirmed by Palatino.

Petitioners' witness, Lacbain, admitted that he did not personally conduct any study on the environmental or health effects of a coal-fired power plant, but only attended seminars and conferences pertaining to climate change; and that the scientific studies mentioned in the penultimate whereas clause of Resolution No. 2011-149 (Exhibit "AAAAA") of the *Sangguniang Panlalawigan* of Zambales is based on what he read on the internet, seminars he attended and what he heard from unnamed experts in the field of environmental protection.

In his Judicial Affidavit (Exhibit "HHHHH"), Palatino stated that he was furnished by the concerned residents the Key Observations and Recommendations on the EIS of Proposed RPE Project by Rex Victor O. Cruz, and that he merely received and read the five (5) scientific studies and articles which challenge the CFB technology. Palatino also testified that: he was only furnished by the petitioners copies of the studies mentioned in his Judicial Affidavit and he did not participate in the execution, formulation or preparation of any of the said documents; he does not personally know Rex Cruz or any of the authors of the studies included in his Judicial Affidavit; he did not read other materials about coal-fired power plants; he is not aware of the acceptable standards as far as the operation of a coal-fired power plant is concerned; petitioner Velarmino was the one who furnished him copies of the documents in reference to the

MOU and some papers related to the case; petitioner Peralta was the one who e-mailed to him the soft copy of all the documents [letters (a) to (o) of his Judicial Affidavit], except the LGU Resolutions; and he has never been at the actual Power Plant project site. It must be noted that petitioners Velarmino and Peralta were never presented as witnesses in this case. In addition, Palatino did not identify the said studies but simply confirmed that the said studies were attached to the Petition.

Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal knowledge, that is, which are derived from the witness' own perception. Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters. Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule. Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements. There are several exceptions to the hearsay rule under the Rules of Court, among which are learned treatises under Section 46 of Rule 130, *viz*:

> "SEC. 46. Learned treatises. -A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject."

The alleged scientific studies mentioned in the Petition cannot be classified as learned treatises. We cannot take judicial notice of the same, and no witness expert in the subject matter of this case testified, that the writers of the said scientific studies are recognized in their profession or calling as experts in the subject.

In stark contrast, respondent RP Energy presented several witnesses on the CFB technology.

In his Judicial Affidavit, witness Wong stated that he obtained a Bachelor of Science, Major in Mechanical Engineering from Worcester Polytechnic Institute; he is a Consulting Engineer of Steam Generators of URS; he was formerly connected with Foster Wheeler

where he held the positions of site commissioning engineer, testing engineer, instrumentation and controls engineer, mechanical equipment department manager, director of boiler performance and mechanical design engineering and pulverized coal product director. He explained that: CFB stands for Circulating Fluidized Bed; it is a process by which fuel is fed to the lower furnace where it is burned in an upward flow of combustion air; limestone, which is used as sulfur absorbent, is also fed to the lower furnace along with the fuel; the mixture of fuel, ash, and the boiler bed sorbent material is carried to the upper part of the furnace and into a cyclone separator; the heavier particles which generally consist of the remaining uncombusted fuel and absorbent material are separated in the cyclone separator and are recirculated to the lower furnace to complete the combustion of any unburned particles and to enhance SO2 capture by the sorbent; fly ash and flue gas exit the cyclone and the fly ash is collected in the electrostatic precipitator; furnace temperature is maintained in the range of 800° to 900° C by suitable heat absorbing surface; the fuel passes through a crusher that reduces the size to an appropriate size prior to the introduction into the lower furnace along with the limestone; the limestone is used as a SO2 sorbent which reacts with the sulfur oxides to form calcium sulfate, an inert and stable material; air fans at the bottom of the furnace create sufficient velocity within the steam generator to maintain a bed of fuel, ash, and limestone mixture; secondary air is also introduced above the bed to facilitate circulation and complete combustion of the mixture; the combustion process generates heat, which then heats the boiler feedwater flowing through boiler tube bundles under pressure; the heat generated in the furnace circuit turns the water to saturated steam which is further heated to superheated steam; this superheated steam leaves the CFB boiler and expands through a steam turbine; the steam turbine is directly connected to a generator that turns and creates electricity; after making its way through the steam turbine, the low-pressure steam is exhausted downwards into a condenser; heat is removed from the steam, which cools and condenses into water (condensate); the condensate is then pumped back through a train of feedwater heaters to gradually increase its temperature before this water is introduced to the boiler to start the process all over again; and CFB technology has advantages over pulverized coal firing without backend cleanup systems, i.e., greater fuel flexibility, lower SO2 and NOx emissions. Moreover, Wong testified, *inter alia*, that: CFBs have a wider range of flexibility so they can environmentally handle a wider range of fuel constituents,

mainly the constituent sulfur; and is capable of handling different types of coal within the range of the different fuel constituents; since CFB is the newer technology than the PC or stalker fire, it has better environmental production; 50 percent of the electric generation in the United States is still produced by coal combustion; and the CFB absorbs the sulfur dioxide before it is emitted; and there will be a lower percentage of emissions than any other technology for the coal.

In his Judicial Affidavit, Sarrki, stated that: he is the Chief Engineer for Process Concept in Foster Wheeler; he was a Manager of Process Technology for Foster Wheeler from 1995 to 2007; and he holds a Master of Science degree in Chemical Engineering. He explained that: CFB boilers will emit PAHs but only in minimal amounts, while BFB will produce higher PAH emissions; PAH is a natural product of any combustion process; even ordinary burning, such as cooking or driving automobiles, will have some emissions that are not considered harmful; it is only when emissions are of a significant level that damage may be caused; a CFB technology has minimal PAH emissions; the high combustion efficiency of CFB technology, due to long residence time of particles inside the boiler, leads to minimal emissions of PAH; other factors such as increase in the excess air ratio[,] decrease in Ca/S, as well as decrease in the sulfur and chlorine contents of coal will likewise minimize PAH production; and CFB does not cause emissions beyond scientifically acceptable levels. He testified, *inter alia*, that: the CFB technology is used worldwide; they have a 50% percent share of CFB market worldwide; and this will be the first CFB by Foster Wheeler in the Philippines; Foster Wheeler manufactures and supplies different type[s] of boilers including BFB, but CFB is always applied on burning coal, so they do not apply any BFB for coal firing; CFB has features which have much better combustion efficiency, much lower emissions and it is more effective as a boiler equipment; the longer the coal stays in the combustion chamber, the better it is burned; eight (8) seconds is already beyond adequate but it keeps a margin; in CFB technology, combustion technology is uniform throughout the combustion chamber; high velocity is used in CFB technology, that is vigorous mixing or turbulence; turbulence is needed to get contact between fuel and combustion air; and an important feature of CFB is air distribution.

In his Judicial Affidavit, Ouano stated that: he is a licensed Chemical Engineer, Sanitary Engineer and Environmental Planner

in the Philippines; he is also a chartered Professional Engineer in Australia and a member of the colleges of environmental engineers and chemical engineers of the Institution of Engineers (Australia); he completed his Bachelor in Chemical Engineering in 1970, Master of Environmental Engineering in 1972 and Doctor of Environmental Engineering in 1974; he also graduated from the University of Sydney Law School with the degree of Master of Environmental Law in 2002 and PhD in Law from Macquarie University in 2007. He explained in his Judicial Affidavit that: the impacts identified and analyzed in the EIA process are all potential or likely impacts; there are a larger number of EIA techniques for predicting the potential environmental impacts; it is important to note that all those methods and techniques are only for predicting the potential environmental impacts, not the real impacts; almost all environmental systems are non-linear and they are subject to chaotic behavior that even the most sophisticated computer could not predict accurately; and the actual or real environmental impact could only be established when the project is in actual operation. He testified, *inter alia*, that: the higher the temperature the higher the nitrous oxide emitted; in CFB technology, the lower the temperature, the lower is the nitrogen oxide; and it still has a nitrogen oxide but not as high as conventional coal; the CFB is the boiler; from the boiler itself, different pollution control facilities are going to be added; and for the overall plant with the pollution control facilities, the particulate matters, nitrogen oxide and sulfur dioxide are under control. (Citations omitted)[121]

We also note that RP Energy controverted in detail the afore-summarized allegations of the Casiño Group on the four areas of environmental damage that will allegedly occur upon the construction and operation of the power plant:

1. *On thermal pollution of coastal waters.*

As to the extent of the expected rise in water temperature once the power plant is operational, Ms. Mercado stated in her Judicial Affidavit thus:

Q: What was the result of the Thermal Plume Modeling that was conducted for RP Energy?

[121] *Rollo* (G.R. No. 207257), pp. 241-245.

A: The thermal dispersion modeling results show that largest warming change (0.95°C above ambient) is observed in the shallowest (5 m) discharge scenario. The warmest surface temperature change for the deepest (30 m) scenario is 0.18°C. All the simulated scenarios comply with the DAO 90-35 limit for temperature rise of 3°C within the defined 70 x 70 m mixing zone. The proposed power plant location is near the mouth of Subic Bay, thus the tidal currents influence the behavior of thermal discharge plume. Since the area is well-flushed, mixing and dilution of the thermal discharge is expected.

It also concluded that corals are less likely to be affected by the cooling water discharge as corals may persist in shallow marine waters with temperatures ranging from 18°C to 36°C. The predicted highest temperature of 30.75°C, from the 0.95°C increase in ambient in the shallowest (5 m) discharge scenario, is within this range.[122]

In the same vein, Dr. Ouano stated in his Judicial Affidavit:

Q: In page 41, paragraph 99 of the Petition, it was alleged that: "x x x a temperature change of 1°C to 2°C can already affect the metabolism and other biological functions of aquatic organisms such as mortality rate and reproduction." What is your expert opinion, if any, on this matter alleged by the Petitioners?

A: Living organisms have proven time and again that they are very adaptable to changes in the environment. Living organisms have been isolated in volcanic vents under the ocean living on the acidic nutrient soup of sulfur and other minerals emitted by the volcano to sub-freezing temperature in Antarctica. As a general rule, metabolism and reproductive activity [increase] with temperature until a maximum is reached after which [they decline]. For this reason, during winter, animals hibernate and plants become dormant after shedding their leaves. It is on the onset of spring that animals breed and plants bloom when the air and water are warmer. At the middle of autumn when the temperature drops to single digit, whales, fish, birds and other living organisms, which are capable of migrating, move to the other end of the globe

[122] *Rollo* (G.R. No. 207276), Volume I, p. 474.

> where spring is just starting. In the processes of migration, those migratory species have to cross the tropics where the temperature is not just one or two degrees warmer but 10 to 20 degrees warmer.

When discussing the impact of 1 to 2 degrees temperature change and its impact on the ecosystem, the most important factors to consider are – (1) Organism Type – specifically its tolerance to temperature change (mammals have higher tolerance); (2) Base Temperature – it is the temperature over the optimum temperature such that an increase will result in the decline in number of the organisms; (3) Mobility or Space for Migration (i.e., an aquarium with limited space or an open ocean that the organism can move to a space more suited to [a] specific need, such as the migratory birds); and (4) Ecosystem Complexity and Succession. The more complex the ecosystem the more stable it is as succession and adaptation [are] more robust.

Normally, the natural variation in water temperature between early morning to late afternoon could be several degrees (four to five degrees centigrade and up to ten degrees centigrade on seasonal basis). Therefore, the less than one degree centigrade change predicted by the GHD modeling would have minimal impact.[123]

On cross-examination, Dr. Ouano further explained—

ATTY. AZURA:
x x x When you say Organism Type – you mentioned that mammals have a higher tolerance for temperature change?

DR. OUANO:
Yes.

ATTY. AZURA:
What about other types of organisms, Dr. Ouano? Fish for example?

DR. OUANO:
Well, mammals have high tolerance because mammals are warm[-]blooded. Now, when it comes to cold[-]blooded animals the tolerance is much lower. But again when you are considering x x x fish [e]specially in open ocean you have to remember that nature by itself is x x x very brutal x x x where there is always the prey-predator

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[123] CA *rollo*, Volume XVI, pp. 5856-5857.

relationship. Now, most of the fish that we have in open sea [have] already a very strong adaptability mechanism. And in fact, Kingman back in 1964 x x x studied the coal reef around the gulf of Oman where the temperature variation on day to day basis varied not by 1 degree to 2 degrees but by almost 12 degrees centigrade. Now, in the Subic Bay area which when you're looking at it between daytime variation, early dawn when it is cold, the air is cold, the sea temperature, sea water is quite cold. Then by 3:00 o'clock in the afternoon it starts to warm up. So the variation [in the] Subic Bay area is around 2 to 4 degrees by natural variation from the sun as well as from the current that goes around it. So when you are talking about what the report has said of around 1 degree change, the total impact x x x on the fishes will be minimal. x x x

ATTY. AZURA:

x x x So, you said, Dr. Ouano, that fish, while they have a much lower tolerance for temperature variation, are still very adaptable. What about other sea life, Dr. Ouano, for example, sea reptiles?

DR. OUANO:

That's what I said. The most sensitive part of the marine ecology is physically the corals because corals are non-migratory, they are fix[ed]. Second[ly] x x x corals are also highly dependent on sunlight penetration. If they are exposed out of the sea, they die; if they are so deep, they die. And that is why I cited Kingman in his studies of coral adaptability [in] the sea of Oman where there was a very high temperature variation, [they] survived.

ATTY. AZURA:

Would you be aware, Dr. Ouano, if Kingman has done any studies in Subic Bay?

DR. OUANO:

Not in Subic Bay but I have reviewed the temperature variation, natural temperature variation from the solar side, the days side as well as the seasonal variation. There are two types of variation since temperatures are very critical. One is the daily, which means from early morning to around 3:00 o'clock, and the other one is seasonal variation because summer, December, January, February are the cold months and then by April, May we are having warm temperature where the temperature goes around 32-33 degrees; Christmas time, it drops to around 18 to 20 degrees so it[']s a variation of around seasonal variation of 14 degrees although some of the fish might even migrate and that is why I was trying to put in corals because they are the

ones that are really fix[ed]. They are not in a position to migrate in this season.

ATTY. AZURA:

To clarify. You said that the most potentially sensitive part of the ecosystem would be the corals.

DR. OUANO:

Or threatened part because they are the ones [that] are not in a position to migrate.

ATTY AZURA:

In this case, Dr. Ouano, with respect to this project and the projected temperature change, will the corals in Subic Bay be affected?

DR. OUANO:

As far as the outlet is concerned, they have established it outside the coral area. By the time it reaches the coral area the temperature variation, as per the GHD study is very small, it[']s almost negligible.

ATTY AZURA:

Specifically, Dr. Ouano, what does negligible mean, what level of variation are we talking about?

DR. OUANO:

If you are talking about a thermometer, you might be talking about, normally about .1 degrees centigrade. That's the one that you could more or less ascertain. x x x

ATTY. AZURA:

Dr. Ouano, you mentioned in your answer to the same question, Question 51, that there is a normal variation in water temperature. In fact, you said there is a variation throughout the day, daily and also throughout the year, seasonal. Just to clarify, Dr. Ouano. When the power plant causes the projected temperature change of 1 degree to 2 degrees Celsius this will be in addition to existing variations? What I mean, Dr. Ouano, just so I can understand, how will that work? How will the temperature change caused by the power plant work with the existing variation?

DR. OUANO:

There is something like what we call the zonal mixing. This is an area of approximately one or two hectares where the pipe goes out, the hot water goes out. So that x x x, we have to accept x x x that [throughout it] the zone will be a disturb[ed] zone. After that one or

two hectares park the water temperature is well mixed [so] that the temperature above the normal existing variation now practically drops down to almost the normal level.[124]

2. *On air pollution due to dust and combustion gases.*

To establish that the emissions from the operation of the power plant would be compliant with the standards under the Clean Air Act,[125] Ms. Mercado stated in her Judicial Affidavit thus:

271. Q: What was the result of the Air Dispersion Modeling that was conducted for RP Energy?

A: The Air Dispersion Modeling predicted that the Power Plant Project will produce the following emissions, which [are] fully compliant with the standards set by DENR:

	Predicted GLC[126] for 1-hr averaging period	National Ambient Air Quality Guideline Values
SO_2	45.79 μg/Nm^3	340 μg/Nm^3
NO_2	100.8 μg/Nm^3	260 μg/Nm^3
CO	10 μg/Nm^3	35 μg/Nm^3

	Predicted GLC for 8-hr averaging period	National Ambient Air Quality Guideline Values
CO	0.19 mg/ncm	10 μg/Nm^3

	Predicted GLC for 24-hr averaging period	National Ambient Air Quality Guideline Values
SO_2	17.11 μg/Nm^3	180 μg/Nm^3
NO_2	45.79 μg/Nm^3	150 μg/Nm^3

[124] TSN, December 12, 2012, pp. 179-186.

[125] RA 8749 entitled "An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes"; also known as "The Philippine Clean Air Act of 1999."

[126] Refers to ground level concentrations.

	Predicted GLC for 1-yr averaging period	National Ambient Air Quality Guideline Values
SO_2	6.12 μg/Nm^3	80 μg/Nm^3
NO_2	No standard	—
CO	No standard	—

272. Q: What other findings resulted from the Air Dispersion Modeling, if any?

A: It also established that the highest GLC to Clean Air Act Standards ratio among possible receptors was located 1.6 km North NorthEast ("NNE") of the Power Plant Project. Further, this ratio was valued only at 0.434 or less than half of the upper limit set out in the Clean Air Act. This means that the highest air ambient quality disruption will happen only 1.6 km NNE of the Power Plant Project, and that such disruption would still be compliant with the standards imposed by the Clean Air Act.[127]

The Casiño Group argued, however, that, as stated in the EIS, during upset conditions, significant negative environmental impact will result from the emissions. This claim was refuted by RP Energy's witness during cross-examination:

ATTY. AZURA:

If I may refer you to another page of the same annex, Ms. Mercado, that's page 202 of the same document, the August 2012. Fig. 2-78 appears to show, there's a Table, Ms. Mercado, the first table, the one on top appears to show a comparison in normal and upset conditions. I noticed, Ms. Mercado, that the black bars are much higher than the bars in normal condition. Can you state what this means?

MS. MERCADO:

It means there are more emissions that could potentially be released when it is under upset condition.

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[127] *Rollo* (G.R. No. 207276), Volume I, p. 475.

ATTY. AZURA:

I also noticed, Ms. Mercado, at the bottom part of this chart there are Receptor IDs, R1, R2, R3 and so forth and on page 188 of this same document, Annex "9-Mercado," there is a list identifying these receptors, for example, Receptor 6, Your Honor, appears to have been located in Olongapo City, Poblacion. Just so I can understand, Ms. Mercado, does that mean that if upset condition[s] were to occur, the Olongapo City Poblacion will be affected by the emissions?

MS. MERCADO:

All it means is that there will be higher emissions and a higher ground concentration. But you might want to also pay attention to the "y axis," it says there GLC/CAA [Ground Level Concentration/ Clean Air Act limit]. So it means that even under upset conditions… say for R6, the ground level concentration for upset condition is still around .1 or 10% percent only of the Clean Air Act limit. So it's still much lower than the limit.

ATTY. AZURA:

But that would mean, would it not, Ms. Mercado, that in the event of upset conditions[,] emissions would increase in the Olongapo City Poblacion?

MS. MERCADO:

Not emissions will increase. The emissions will be the same but the ground level concentration, the GLC, will be higher if you compare normal versus upset. But even if it[']s under upset conditions, it is still only around 10% percent of the Clean Air Act Limit.

x x x x x x x x x

J. LEAGOGO:

So you are trying to impress upon this Court that even if the plant is in an upset condition, it will emit less than what the national standards dictate?

MS. MERCADO:

Yes, Your Honor.[128]

With respect to the claims that the power plant will release dangerous PAHs and CO, Engr. Sarrki stated in his Judicial Affidavit thus:

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[128] TSN, December 5, 2012, pp. 162-164, 169.

Q: In page 42, paragraph 102 of the Petition, the Petitioners alleged that Volatile Organic Compounds ("VOC") specifically Polycyclic Aromatic Hydrocarbon ("PAH") will be emitted even by CFB boilers. What can you say about this?

A: Actually, the study cited by the Petitioners does not apply to the present case because it does not refer to CFB technology. The study refers to a laboratory-scale tubular Bubbling Fluidized Bed ("BFB") test rig and not a CFB. CFB boilers will emit PAHs but only in minimal amounts. Indeed, a BFB will produce higher PAH emissions.

x x x x x x x x x

Q: Why can the study cited by Petitioners not apply in the present case?

A: The laboratory-scale BFB used in the study only has one (1) air injection point and does not replicate the staged-air combustion process of the CFB that RP Energy will use. This staged-air process includes the secondary air. Injecting secondary air into the system will lead to more complete combustion and inhibits PAH production. There is a study entitled "Polycyclic Aromatic Hydrocarbon (PAH) Emissions from a Coal-Fired Pilot FBC System" by Kunlei Liu, Wenjun Han, Wei-Ping Pan, John T. Riley found in the Journal of Hazardous Materials B84 (2001) where the findings are discussed.

Also, the small-scale test rig utilized in the study does not simulate the process conditions (hydrodynamics, heat transfer characteristics, solid and gas mixing behavior, etc.) seen in a large scale utility boiler, like those which would be utilized by the Power Plant Project.

x x x x x x x x x

Q: Aside from residence time of particles and secondary air, what other factors, if any, reduce PAH production?

A: Increase in the excess air ratio will also minimize PAH production. Furthermore, decrease in Calcium to Sulfur moral ratio ("Ca/S"), as well as decrease in the sulfur and chlorine contents of coal will likewise minimize PAH production. This is also based on the study entitled "Polycyclic Aromatic Hydrocarbon (PAH) Emissions from a Coal-Fired Pilot FBC

System" by Kunlei Liu, Wenjun Han, Wei-Ping Pan, John T. Riley.

In RP Energy's Power Plant Project, the projected coal to be utilized has low sulfur and chlorine contents minimizing PAH production. Also, due to optimum conditions for the in-furnace SO_2 capture, the Ca/S will be relatively low, decreasing PAH production.

Q: In paragraph 104 of the Petition, it was alleged that "Carbon monoxide (CO), a poisonous, colorless and odorless gas is also produced when there is partial oxidation or when there is not enough oxygen (O_2) to form carbon dioxide (CO_2)." What can you say about this?

A: CFB technology reduces the CO emissions of the Power Plant Project to safe amounts. In fact, I understand that the projected emissions level of the Power Plant Project compl[ies] with the International Finance Corporation ("IFC") standards. Furthermore, characteristics of CFB technology such as long residence time, uniform temperature and high turbulence provide an effective combustion environment which results [in] lower and safer CO emissions.

Q: I have no further questions for you at the moment. Is there anything you wish to add to the foregoing?

A: Yes. PAH is a natural product of ANY combustion process. Even ordinary burning, such as cooking or driving automobiles, will have some emissions that are not considered harmful. It is only when emissions are of a significant level that damage may be caused.

Given that the Power Plant Project will utilize CFB technology, it will have minimal PAH emissions. The high combustion efficiency of CFB technology, due to the long residence time of particles inside the boiler, leads to the minimal emissions of PAH. Furthermore, other factors such as increase in the excess air ratio, decrease in Ca/S, as well as decrease in the sulfur and chlorine contents of coal will likewise minimize PAH production. CFB does not cause emissions beyond scientifically acceptable levels, and we are confident it will not result in the damage speculated by the Petitioners.[129]

3. *On water pollution from toxic coal combustion waste.*

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[129] CA *rollo*, Volume XV, pp. 5763-5765.

With regard to the claim that coal combustion waste produced by the plant will endanger the health of the inhabitants nearby, Dr. Ouano stated in his Judicial Affidavit thus:

Q: In page 43, paragraph 110 of the Petition, it was alleged that: "[s]olid coal combustion waste is highly toxic and is said to cause birth defects and cancer risks among others x x x." What is your expert opinion, if any, on this matter alleged by the Petitioners?

A: Coal is geologically compressed remains of living organisms that roamed the earth several million years ago. In the process of compression, some of the minerals in the soil, rocks or mud, the geologic media for compression, are also imparted into the compressed remains. If the compressing media of mud, sediments and rocks contain high concentration of mercury, uranium, and other toxic substances, the coal formed will likewise contain high concentration of those substances. If the compressing materials have low concentration of those substances, then the coal formed will likewise have low concentration of those substances. If the coal does not contain excessive quantities of toxic substances, the solid residues are even used in agriculture to supply micronutrients and improve the potency of fertilizers. It is used freely as a fill material in roads and other construction activities requiring large volume of fill and as additive in cement manufacture. After all, diamonds that people love to hang around their necks and keep close to the chest are nothing more than the result of special geologic action, as those in volcanic pipes on coal.[130]

RP Energy further argued, a matter which the Casiño Group did not rebut or refute, that the waste generated by the plant will be properly handled, to wit:

4.1.49 When coal is burned in the boiler furnace, two by-products are generated - bottom and fly ash. Bottom ash consists of large and fused particles that fall to the bottom of the furnace and mix with the bed media. Fly ash includes fine-grained and powdery particles that are carried away by flue gas into the electrostatic precipitator, which is then sifted and collected. These by-products are non-

[130] CA *rollo,* Volume XVI, p. 5857.

hazardous materials. In fact, a coal power plant's Fly Ash, Bottom Ash and Boiler Slag have consequent beneficial uses which "generate significant environmental, economic, and performance benefits." Thus, fly ash generated during the process will be sold and transported to cement manufacturing facilities or other local and international industries.

4.1.50 RP Energy shall also install safety measures to insure that waste from burning of coal shall be properly handled and stored.

4.1.51 Bottom ash will be continuously collected from the furnace and transferred through a series of screw and chain conveyors and bucket elevator to the bottom ash silo. The collection and handling system is enclosed to prevent dust generation. Discharge chutes will be installed at the base of the bottom ash silo for unloading. Open trucks will be used to collect ash through the discharge chutes. Bottom ash will be sold, and unsold ash will be stored in ash cells. A portion of the bottom ash will be reused as bed material through the installation of a bed media regeneration system (or ash recycle). Recycled bottom ash will be sieved using a vibrating screen and transported to a bed material surge bin for re-injection into the boiler.

4.1.52 Fly ash from the electrostatic precipitator is pneumatically removed from the collection hopper using compressed air and transported in dry state to the fly ash silo. Two discharge chutes will be installed at the base of the fly ash silo. Fly ash can either be dry-transferred through a loading spout into an enclosed lorry or truck for selling, re-cycling, or wet-transferred through a wet unloader into open dump trucks and transported to ash cells. Fly ash discharge will operate in timed cycles, with an override function to achieve continuous discharge if required. Fly ash isolation valves in each branch line will prevent leakage and backflow into non-operating lines.

4.1.53 Approximately 120,000m^2 will be required for the construction of the ash cell. Ash will be stacked along the sloping hill, within a grid of excavations (i.e. cells) with a 5m embankment. Excavated soils will be used for embankment construction and backfill. To prevent infiltration [of] ash deposits into the groundwater, a clay layer with minimum depth of 400mm will be laid at the base of each cell. For every 1-m depth of ash deposit, a 10-cm soil backfill will be applied to immobilize ash and prevent migration via wind. Ash cell walls will be lined with high-density polyethylene to prevent

seepage. This procedure and treatment method is in fact suitable for disposal of toxic and hazardous wastes although fly ash is not classified as toxic and hazardous materials.[131]

Anent the claims that the plant is susceptible to earthquake and landslides, Dr. Ouano testified thus:

J. LEAGOGO:

In terms of fault lines, did you study whether this project site is in any fault line?

DR. OUANO:

There are some fault lines and in fact, in the Philippines it is very difficult to find an area except Palawan where there is no fault line within 20 to 30 [kilometers]. But then fault lines as well as earthquakes really [depend] upon your engineering design. I mean, Sto. Tomas University has withstood all the potential earthquakes we had in Manila[,] even sometimes it[']s intensity 8 or so because the design for it back in 1600 they are already using what we call floating foundation. So if the engineering side for it[,] technology is there to withstand the expected fault line [movement].

J. LEAGOGO:

What is the engineering side of the project? You said UST is floating.

DR. OUANO:

The foundation, that means to say you don't break…

J. LEAGOGO:

Floating foundation. What about this, what kind of foundation?

DR. OUANO:

It will now depend on their engineering design, the type of equipment…

J. LEAGOGO:

No, but did you read it in their report?

DR. OUANO:

It[']s not there in their report because it will depend on the supplier, the equipment supplier.

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[131] *Rollo* (G.R. No. 207282), pp. 342-343.

J. LEAGOGO:
So it[']s not yet there?

DR. OUANO:
It[']s not yet there in the site but it is also covered in our Building Code what are the intensities of earthquakes expected of the different areas in the Philippines.

J. LEAGOGO:
Have you checked our geo-hazard maps in the Philippines to check on this project site?

DR. OUANO:
Yes. It is included there in the EIA Report.

J. LEAGOGO:
It[']s there?

DR. OUANO:
It[']s there.[132]

4. *On acid deposition in aquatic and terrestrial ecosystems*.

Relative to the threat of acid rain, Dr. Ouano stated in his Judicial Affidavit, thus:

Q: In page 44, paragraph 114 of the Petition, it was alleged that "the coal-fired power plant will release 1,888 tons of nitrous oxides (NO_x) per year and 886 tons of sulfur dioxide (SO_2) per year. These oxides are the precursors to the formation of sulfuric acid and nitric acid which are responsible for acid deposition." What is your expert opinion on this matter alleged by the Petitioners?

A: NO_2 is found in the air, water and soil from natural processes such as lightning, bacterial activities and geologic activities as well as from human activities such as power plants and fertilizer usage in agriculture. SO_2 is also found in air, water and soil from bacterial, geologic and human activities.

NO_2 and SO_2 in the air are part of the natural nitrogen and sulfur cycle to widely redistribute and recycle those essential chemicals for use by plants. Without the NO_2 and SO_2 in the air,

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[132] TSN, December 12, 2012, pp. 171-174.

plant and animal life would be limited to small areas of this planet where nitrogen and sulfur are found in abundance. With intensive agricultural practices, nitrogen and sulfur are added in the soil as fertilizers.

Acid rain takes place when the NO_2 and SO_2 concentration are excessive or beyond those values set in the air quality standards. NO_2 and SO_2 in the air in concentrations lower than those set in the standards have beneficial effect to the environment and agriculture and are commonly known as micronutrients.[133]

On clarificatory questions from the appellate court, the matter was further dissected thus:

J. LEAGOGO:
x x x The project will release 1,888 tons of nitrous oxide per year. And he said, yes; that witness answered, yes, it will produce 886 tons of sulfur dioxide per year. And he also answered yes, that these oxides are the precursors to the formation of sulfuric acid and nitric acid. Now my clarificatory question is, with this kind of releases there will be acid rain?

DR. OUANO:
No.

J. LEAGOGO:
Why?

DR. OUANO:
Because it[']s so dilute[d].

J. LEAGOGO:
It will?

DR. OUANO:
Because the acid concentration is so dilute[d] so that it is not going to cause acid rain.

J. LEAGOGO:
The acid concentration is so diluted that it will not cause acid rain?

DR. OUANO:
Yes.

[133] CA *Rollo*, Volume XVI, p. 5859.

J. LEAGOGO:

What do you mean it[']s so diluted? How will it be diluted?

DR. OUANO:

Because it[']s going to be mixed with the air in the atmosphere; diluted in the air in the atmosphere. And besides this 886 tons, this is not released in one go, it is released almost throughout the year.

J. LEAGOGO:

You also answered in Question No. 61, "acid rain takes place when the NO2 AND SO2 concentration are excessive." So when do you consider it as excessive?

DR. OUANO:

That is something when you are talking about acid…

J. LEAGOGO:

In terms of tons of nitrous oxide and tons of sulfur oxide, when do you consider it as excessive?

DR. OUANO:

It is in concentration not on tons weight, Your Honor.

J. LEAGOGO:

In concentration?

DR. OUANO:

In milligrams per cubic meter, milligrams per standard cubic meter.

J. LEAGOGO:

So being an expert, what will be the concentration of this kind of 1,888 tons of nitrous oxide? What will be the concentration in terms of your…?

DR. OUANO:

If the concentration is in excess of something like 8,000 micrograms per standard cubic meters, then there is already potential for acid rain.

J. LEAGOGO:

I am asking you, Dr. Ouano, you said it will release 1,888 tons of nitrous oxide?

DR. OUANO:

Yes.

J. LEAGOGO:
In terms of concentration, what will that be?

DR. OUANO:
In terms of the GHD study that will result [in] 19 milligrams per standard cubic meters and the time when acid rain will start [is when the concentration gets] around 8,000 milligrams per standard cubic meters. So we have 19 compared to 8,000. So we are very, very safe.

J. LEAGOGO:
What about SO2?

DR. OUANO:
SO2, we are talking about ... you won't mind if I go to my *codigo*. For sulfur dioxide this acid rain most likely will start at around 7,000 milligrams per standard cubic meter but then … sorry, it[']s around 3,400 micrograms per cubic meter. That is the concentration for sulfur dioxide, and in our plant it will be around 45 micrograms per standard cubic meter. So the acid rain will start at 3,400 and the emission is estimated here to result to concentration of 45.7 micrograms.

J. LEAGOGO:
That is what GHD said in their report.

DR. OUANO:
Yes. So that is the factor of x x x safety that we have.[134]

Apart from the foregoing evidence, we also note that the above and other environmental concerns are extensively addressed in RP Energy's Environmental Management Plan or Program (EMP). The EMP is "a section in the EIS that details the prevention, mitigation, compensation, contingency and monitoring measures to enhance positive impacts and minimize negative impacts and risks of a proposed project or undertaking."[135] One of the conditions of the ECC is that RP Energy shall strictly comply with and implement its approved EMP. The Casiño Group failed to contest, with proof, the adequacy of the mitigating measures stated in the aforesaid EMP.

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[134] TSN, December 12, 2012, pp. 141-148.

[135] Section 3(l), DAO 2003-30.

In upholding the evidence and arguments of RP Energy, relative to the lack of proof as to the alleged significant environmental damage that will be caused by the project, the appellate court relied mainly on the testimonies of experts, which we find to be in accord with judicial precedents. Thus, we ruled in one case:

> Although courts are not ordinarily bound by testimonies of experts, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which serve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effects (20 Am. Jur., 1056-1058). The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[136]

Hence, we sustain the appellate court's findings that the Casiño Group failed to establish the alleged grave environmental damage which will be caused by the construction and operation of the power plant.

In another vein, we, likewise, agree with the observations of the appellate court that the type of coal which shall be used in the power plant has important implications as to the possible significant negative environmental impacts of the subject project.[137]

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[136] *Salomon v. Intermediate Appellate Court*, 263 Phil. 1068, 1077 (1990).

[137] The appellate court noted, thus:

However, while the CFB technology appears to be a better choice compared with the traditional technology for operating power plants, it cannot be declared, at this point in time, that the CFB technology to be used by RP Energy in its Power Plant project will not cause any environmental damage or harm.

However, there is no coal supply agreement, as of yet, entered into by RP Energy with a third-party supplier. In accordance with the terms and conditions of the ECC and in compliance with existing environmental laws and standards, RP Energy is obligated to make use of the proper coal type that will not cause significant negative environmental impacts.

The alleged negative environmental assessment of the project by experts in a report generated during the social acceptability consultations

The Casiño Group also relies heavily on a report on the social acceptability process of the power plant project to bolster its claim that the project will cause grave environmental damage. We purposely discuss this matter in this separate subsection for reasons which will be made clear shortly.

But first we shall present the pertinent contents of this report.

Sarkki, who is one of the members of the team that developed the CFB technology and an employee of Foster Wheeler (manufacturer of the CFB boilers) testified that: it depends on the kind of coal and the technology to be used in burning the coal; semirara coal is known to have very high fouling characteristics and it was not in the interest of RP Energy to utilize said coal; and high fouling means ash is melting in low temperature and collected on its surfaces and making it impossible to continue the operation of a boiler; RP Energy has not yet ordered any CFB boiler from Foster Wheeler, and manufacturing has not started because there is no finalized contract; and RP Energy is still finalizing its coal contract. Wong testified that he was not shown any coal supply agreement. Ouano testified that, per report, there are no coal and equipment supply agreements yet and that he recommended to RP Energy the Indonesian coal because it has much lower volatile matter and it is better than semirara coal. Mercado also testified that she did not see any coal supply agreement with a supplier. Evangelista testified that RP Energy already selected Foster Wheeler as the supplier for the Power Plant project's boiler but there is no purchase agreement yet in connection with the equipment to be used. Thus, since RP Energy has, as yet, no equipment purchase agreement in connection with its proposed CFB Coal-Fired Power Plant project nor a coal supply agreement that comply with the recommendations of the various engineers on CFB technology, there is no scientific certainty of its environmental effect. [*Rollo* (G.R. No. 207257), pp. 245-246]

According to the Casiño Group, from December 7 to 9, 2011, the SBMA conducted social acceptability policy consultations with different stakeholders on RP Energy's proposed 600 MW coal plant project at the Subic Bay Exhibition and Convention Center. The results thereof are contained in a document prepared by SBMA entitled "Final Report: Social Acceptability Process for RP Energy, Inc.'s 600-MW Coal Plant Project" (Final Report). We note that SBMA adopted the Final Report as a common exhibit with the Casiño Group in the course of the proceedings before the appellate court.

The Final Report stated that there was a clear aversion to the concept of a coal-fired power plant from the participants. Their concerns included environmental, health, economic and socio-cultural factors. Pertinent to this case is the alleged assessment, contained in the Final Report, of the potential effects of the project by three experts: (1) Dr. Rex Cruz (Dr. Cruz), Chancellor of the University of the Philippines, Los Baños and a forest ecology expert, (2) Dr. Visitacion Antonio, a toxicologist, who related information as to public health; and (3) Andre Jon Uychiaco, a marine biologist.

The Final Report stated these experts' alleged views on the project, thus:

IV. EXPERTS' OPINION

x x x x x x x x x

The specialists shared the judgment that the conditions were not present to merit the operation of a coal-fired power plant, and to pursue and carry out the project with confidence and assurance that the natural assets and ecosystems within the Freeport area would not be unduly compromised, or that irreversible damage would not occur and that the threats to the flora and fauna within the immediate community and its surroundings would be adequately addressed.

The three experts were also of the same opinion that the proposed coal plant project would pose a wide range of negative impacts on the environment, the ecosystems and human population within the impact zone.

The specialists likewise deemed the Environment Impact Assessment (EIA) conducted by RPEI to be incomplete and limited in scope based on the following observations:

i. The assessment failed to include areas 10km. to 50km. from the operation site, although according to the panel, sulfur emissions could extend as far as 40-50 km.

ii. The EIA neglected to include other forests in the Freeport in its scope and that there were no specific details on the protection of the endangered flora and endemic fauna in the area. Soil, grassland, brush land, beach forests and home gardens were also apparently not included in the study.

iii. The sampling methods used in the study were limited and insufficient for effective long-term monitoring of surface water, erosion control and terrestrial flora and fauna.

The specialists also discussed the potential effects of an operational coal-fired power plant [on] its environs and the community therein. Primary among these were the following:

i. Formation of acid rain, which would adversely affect the trees and vegetation in the area which, in turn, would diminish forest cover. The acid rain would apparently worsen the acidity of the soil in the Freeport.

ii. Warming and acidification of the seawater in the bay, resulting in the *bio-accumulation* of contaminants and toxic materials which would eventually lead to the overall reduction of marine productivity.

iii. Discharge of pollutants such as Nitrous Oxide, Sodium Oxide, Ozone and other heavy metals such as mercury and lead to the surrounding region, which would adversely affect the health of the populace in the vicinity.

V. FINDINGS

Based on their analyses of the subject matter, the specialists recommended that the SBMA re-scrutinize the coal-fired power plant project with the following goals in mind:

i. To ensure its coherence and compatibility to [the] SBMA mandate, vision, mission and development plans, including its Protected Area Management Plan;

ii. To properly determine actual and potential costs and benefits;

iii. To effectively determine the impacts on environment and health; and

iv. To ensure a complete and comprehensive impacts zone study.

The specialists also urged the SBMA to conduct a *Comprehensive Cost And Benefit Analysis Of The Proposed Coal Plant Project Relative To Each Stakeholder Which Should Include The Environment As Provider Of Numerous Environmental Goods And Services*.

They also recommended an *Integrated/Programmatic Environmental Impact Assessment* to accurately determine the environmental status of the Freeport ecosystem as basis and reference in evaluating future similar projects. The need for a more *Comprehensive Monitoring System for the Environment and Natural Resources* was also reiterated by the panel.[138]

Of particular interest are the alleged key observations of Dr. Cruz on the EIS prepared by RP Energy relative to the project:

Key Observations and Recommendations on the EIS of Proposed RPE Project
Rex Victor O. Cruz
Based on SBMA SAP on December 7-9, 2011

1. The baseline vegetation analysis was limited only within the project site and its immediate vicinity. No vegetation analysis was done in the brushland areas in the peninsula which is likely to be affected in the event acid rain forms due to emissions from the power plant.

2. The forest in the remaining forests in the Freeport was not considered as impact zone as indicated by the lack of description of these forests and the potential impacts the project might have on these forests. This appears to be a key omission in the EIS considering that these forests are well within 40 to 50 km away from the site and that there are studies showing that the impacts of sulphur emissions can extend as far as 40 to 50 km away from the source.

3. There are 39 endemic fauna and 1 endangered plant species (Molave) in the proposed project site. There will be a need to make

[138] CA *rollo*, Volume I, pp. 127-129.

sure that these species are protected from being damaged permanently in wholesale. Appropriate measures such as *ex situ* conservation and translocation if feasible must be implemented.

4. The Project site is largely in grassland interspersed with some trees. These plants if affected by acid rain or by sulphur emissions may disappear and have consequences on the soil properties and hydrological processes in the area. Accelerated soil erosion and increased surface runoff and reduced infiltration of rainwater into the soil.

5. The rest of the peninsula is covered with brushland but were never included as part of the impact zone.

6. There are home gardens along the coastal areas of the site planted to ornamental and agricultural crops which are likely to be affected by acid rain.

7. There is also a beach forest dominated by aroma, talisai and agoho which will likely be affected also by acid rain.

8. There are no Environmentally Critical Areas within the 1 km radius from the project site. However, the Olongapo Watershed Forest Reserve, a protected area is approximately 10 km southwest of the project site. Considering the prevailing wind movement in the area, this forest reserve is likely to be affected by acid rain if it occurs from the emission of the power plant. This forest reserve is however not included as part of the potential impact area.

9. Soil in the project site and the peninsula is thin and highly acidic and deficient in NPK with moderate to severe erosion potential. The sparse vegetation cover in the vicinity of the project site is likely a result of the highly acidic soil and the nutrient deficiency. Additional acidity may result from acid rain that may form in the area which could further make it harder for the plants to grow in the area that in turn could exacerbate the already severe erosion in the area.

10. There is a need to review the proposal to ensure that the proposed project is consistent with the vision for the Freeport as enunciated in the SBMA Master Plan and the Protected Area Management Plan. This will reinforce the validity and legitimacy of these plans as a legitimate framework for screening potential locators in the Freeport. It will also reinforce the trust and confidence of the stakeholders on the competence and authority of the SBMA that would translate in stronger popular support to the programs implemented in the Freeport.

11. The EGF and Trust Fund (Table 5.13) should be made clear that the amounts are the minimum amount and that adequate funds will be provided by the proponent as necessary beyond the minimum amounts. Furthermore the basis for the amounts allocated for the items (public liability and rehabilitation) in Trust Fund and in EGF (tree planting and landscaping, artificial reef establishment) must be clarified. The specific damages and impacts that will be covered by the TF and EGF must also be presented clearly at the outset to avoid protracted negotiations in the event of actual impacts occurring in the future.

12. The monitoring plan for terrestrial flora and fauna is not clear on the frequency of measurement. More importantly, the proposed method of measurement (sampling transect) while adequate for estimating the diversity of indices for benchmarking is not sufficient for long[-]term monitoring. Instead, long[-]term monitoring plots (at least 1 hectare in size) should be established to monitor the long[-]term impacts of the project on terrestrial flora and fauna.

13. Since the proposed monitoring of terrestrial flora and fauna is limited to the vicinity of the project site, it will be useful not only for mitigating and avoiding unnecessary adverse impacts of the project but also for improving management decisions if long[-]term monitoring plots for the remaining natural forests in the Freeport are established. These plots will also be useful for the study of the dynamic interactions of terrestrial flora and fauna with climate change, farming and other human activities and the resulting influences on soil, water, biodiversity, and other vital ecosystem services in the Freeport.[139]

We agree with the appellate court that the alleged statements by these experts cannot be given weight because they are hearsay evidence. None of these alleged experts testified before the appellate court to confirm the pertinent contents of the Final Report. No reason appears in the records of this case as to why the Casiño Group failed to present these expert witnesses.

We note, however, that these statements, on their face, especially the observations of Dr. Cruz, raise serious objections to the environmental soundness of the project, specifically, the

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

EIS thereof. It brings to fore the question of whether the Court can, on its own, compel the testimonies of these alleged experts in order to shed light on these matters in view of the right at stake— not just damage to the environment but the health, well-being and, ultimately, the lives of those who may be affected by the project.

The Rules of Procedure for Environmental Cases liberally provide the courts with means and methods to obtain sufficient information in order to adequately protect or safeguard the right to a healthful and balanced ecology. In Section 6 (l)[140] of Rule 3 (Pre-Trial), when there is a failure to settle, the judge shall, among others, determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*). While, in Section 12[141] of Rule 7 (Writ of *Kalikasan*), a party

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[140] SEC. 6. *Failure to settle.* - If there is no full settlement, the judge shall:

x x x x x x x x x

(l) Determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*); x x x

[141] SEC. 12. *Discovery Measures.* — A party may file a verified motion for the following reliefs:

(a) *Ocular Inspection;* order — The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon. The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

(b) *Production or inspection of documents or things;* order —The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs,

may avail of discovery measures: (1) ocular inspection and (2) production or inspection of documents or things. The liberality of the Rules in gathering and even compelling information, specifically with regard to the Writ of *Kalikasan*, is explained in this wise:

> [T]he writ of *kalikasan* was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government. The writ would effectively serve as a remedy for the enforcement of the right to information about the environment. The scope of the fact-finding power could be: (1) anything related to the issuance, grant of a government permit issued or information controlled by the government or private entity and (2) [i]nformation contained in documents such as environmental compliance certificate (ECC) and other government records. In addition, the [w]rit may also be employed to compel the production of information, subject to constitutional limitations. This function is analogous to a discovery measure, and may be availed of upon application for the writ.[142]

Clearly, in environmental cases, the power to appoint friends of the court in order to shed light on matters requiring special technical expertise as well as the power to order ocular inspections and production of documents or things evince the main thrust of, and the spirit behind, the Rules to allow the court sufficient leeway in acquiring the necessary information to rule on the issues presented for its resolution, to the end that the right to a healthful and balanced ecology may be adequately protected. To draw a parallel, in the protection of the constitutional rights of an accused, when life or liberty is at stake, the testimonies

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objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

[142] *Annotation*, p. 80.

of witnesses may be compelled as an attribute of the Due Process Clause. Here, where the right to a healthful and balanced ecology of a substantial magnitude is at stake, should we not tread the path of caution and prudence by compelling the testimonies of these alleged experts?

After due consideration, we find that, based on the statements in the Final Report, there is no sufficiently compelling reason to compel the testimonies of these alleged expert witnesses for the following reasons.

First, the statements are not sufficiently *specific* to point to us a flaw (or flaws) in the study or design/implementation (or some other aspect) of the project which provides a causal link or, at least, a reasonable connection between the construction and operation of the project vis-à-vis potential grave environmental damage. In particular, they do not explain why the Environmental Management Plan (EMP) contained in the EIS of the project will not adequately address these concerns.

Second, some of the concerns raised in the alleged statements, like acid rain, warming and acidification of the seawater, and discharge of pollutants were, as previously discussed, addressed by the evidence presented by RP Energy before the appellate court. Again, these alleged statements do not explain why such concerns are not adequately covered by the EMP of RP Energy.

Third, the key observations of Dr. Cruz, while concededly assailing certain aspects of the EIS, do not clearly and specifically establish how these omissions have led to the issuance of an ECC that will pose significant negative environmental impacts once the project is constructed and becomes operational. The recommendations stated therein would seem to suggest points for improvement in the operation and monitoring of the project, but they do not clearly show why such recommendations are indispensable for the project to comply with existing environmental laws and standards, or how non-compliance with such recommendations will lead to an environmental damage of the magnitude contemplated under the writ of *kalikasan*. Again,

these statements do not state with sufficient particularity how the EMP in the EIS failed to adequately address these concerns.

Fourth, because the reason for the non-presentation of the alleged expert witnesses does not appear on record, we cannot assume that their testimonies are being unduly suppressed.

By ruling that we do not find a sufficiently compelling reason to compel the taking of the testimonies of these alleged expert witnesses in relation to their serious objections to the power plant project, we do not foreclose the possibility that their testimonies could later on be presented, in a proper case, to more directly, specifically and sufficiently assail the environmental soundness of the project and establish the requisite magnitude of actual or threatened environmental damage, if indeed present. After all, their sense of civic duty may well prevail upon them to voluntarily testify, if there are truly sufficient reasons to stop the project, above and beyond their inadequate claims in the Final Report that the project should not be pursued. As things now stand, however, we have insufficient bases to compel their testimonies for the reasons already proffered.

The alleged admissions of grave environmental damage in the EIS of the project.

In their Omnibus Motions for Clarification and Reconsideration before the appellate court and Petition for Review before this Court, the Casiño Group belatedly claims that the statements in the EIS prepared by RP Energy established the significant negative environmental impacts of the project. They argue in this manner:

Acid Rain

35. According to RP Energy's Environmental Impact Statement for its proposed 2 x 150 MW Coal-Fired Thermal Power Plant Project, acid rain may occur in the combustion of coal, to wit –

x x x x x x x x x

During the operation phase, combustion of coal will result in emissions of particulates SOx and NOx. This may contribute

to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area.

x x x x x x x x x

Asthma Attacks

36. The same EPRMP[143] mentioned the incidence of asthma attacks [as a] result of power plant operations, to wit –

x x x x x x x x x

The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations.[144]

RP Energy, however, counters that the above portions of the EIS were quoted out of context. As to the subject of acid rain, the EIS states in full:

Operation

During the operation phase, combustion of coal will result in emissions of particulates, SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area. Emissions may also have an effect on vegetation (Section 4.1.4.2). **However, the use of CFBC technology is a built-in measure that results in reduced emission concentrations. SOx emissions will be minimised by the inclusion of a desulfurisation process, whilst NOx emissions will be reduced as the coal is burned at a temperature lower than that required to oxidise nitrogen.**[145] (Emphasis supplied)

As to the subject of asthma attacks, the EIS states in full:

The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended

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[143] Environmental Performance Report and Management Plan.

[144] *Rollo* (G.R. 207282), pp. 21-22.

[145] CA *rollo,* Volume III, p. 847.

particulates from plant operations. Coal and ash particulates may also become suspended and dispersed into the air during unloading and transport, depending on wind speed and direction. **However, effect on air quality due to windblown coal particulates will be insignificant as the coal handling system will have enclosures (*i.e.* enclosed conveyors and coal dome) to eliminate the exposure of coal to open air, and therefore greatly reduce the potential for particulates from being carried away by wind (coal handling systems, Section 3.4.3.3). In addition, the proposed process will include an electrostatic precipitator that will remove fly ash from the flue gas prior to its release through the stacks, and so particulates emissions will be minimal.**[146] (Emphasis supplied)

We agree with RP Energy that, while the EIS discusses the subjects of acid rain and asthma attacks, it goes on to state that there are mitigating measures that will be put in place to prevent these ill effects. Quite clearly, the Casiño Group quoted piecemeal the EIS in such a way as to mislead this Court as to its true and full contents.

We deplore the way the Casiño Group has argued this point and we take this time to remind it that litigants should not trifle with court processes. Along the same lines, we note how the Casiño Group has made serious allegations in its Petition for Writ of *Kalikasan* but failed to substantiate the same in the course of the proceedings before the appellate court. In particular, during the preliminary conference of this case, the Casiño Group expressly abandoned its factual claims on the alleged grave environmental damage that will be caused by the power plant (*i.e.*, air, water and land pollution) and, instead, limited itself to legal issues regarding the alleged non-compliance of RP Energy with certain laws and rules in the procurement of the ECC.[147] We also note how the Casiño Group failed to comment on the subject Petitions before this Court, which led this Court to eventually dispense with its comment.[148] We must express our

[146] *Id*.

[147] TSN, October 29, 2012, p. 82; *see also* issues for the Casiño Group in preliminary conference.

[148] In its Resolution dated July 23, 2013, the Court required the adverse parties to comment within ten days from notice on the separate Petitions for

disapproval over the way it has prosecuted its claims, bordering as it does on trifling with court processes. We deem it proper, therefore, to admonish it to be more circumspect in how it prosecutes its claims.

In sum, we agree with the appellate court that the Casiño Group failed to substantiate its claims that the construction and operation of the power plant will cause environmental damage of the magnitude contemplated under the writ of *kalikasan*. The evidence it presented is inadequate to establish the factual bases of its claims.

II.

Whether the ECC is invalid for lack of signature of Mr. Luis Miguel Aboitiz (Mr. Aboitiz), as representative of RP Energy, in the Statement of Accountability of the ECC.

The appellate court ruled that the ECC is invalid because Mr. Aboitiz failed to sign the Statement of Accountability portion of the ECC.

We shall discuss the correctness of this ruling on both procedural and substantive grounds.

Procedurally, we cannot fault the DENR for protesting the manner by which the appellate court resolved the issue of the aforesaid lack of signature. We agree with the DENR that this issue was not among those raised by the Casiño Group in its Petition for Writ of *Kalikasan*.[149] What is more, this was not

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Review on *Certiorari* in G.R. Nos. 207257, 207276, 207282 and 207366. Then in its Resolution dated April 1, 2014, the Court resolved to, among others, dispense with the filing of the comment of respondents Casiño, *et al*. (Casiño Group) in G.R. No. 207276. Additionally, the Court, among others, noted in its Resolution dated June 10, 2014, SBMA's Manifestation and Motion to Resolve dated May 21, 2014 praying, among others, that respondents Casiño, *et al*. (Casiño Group) be deemed to have waived their right to file their comment with respect to the Petition for Review on *Certiorari* dated July 15, 2013 in G.R. No. 207366.

[149] As earlier noted, the grounds raised by the Casiño Group in its Petition for Writ of *Kalikasan* were limited to whether: (1) the power plant project would cause grave environmental damage; (2) it would adversely affect the

one of the triable issues *specifically* set during the preliminary conference of this case.[150]

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health of the residents of the municipalities of Subic, Zambales, Morong, Hermosa, and the City of Olongapo; (3) the ECC was issued and the LDA entered into without the prior approval of the *sanggunians* concerned as required under Sections 26 and 27 of the Local Government Code (LGC); (4) the LDA was entered into without securing a prior certification from the NCIP as required under Section 59 of the IPRA Law; (5) Section 8.3 of DAO 2003-30 which allows amendments of ECCs is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new EIS; and (6) due to the nullity of Section 8.3 of DAO 2003-30, all amendments to RP Energy's ECC are null and void.

[150] As narrated earlier, the issues set during the preliminary conference were limited to:

I. ISSUES

A. Petitioners (Casiño Group)

1. Whether x x x the DENR Environmental Compliance Certificate ('ECC' x x x) in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project ('Power Plant,' x x x) and its amendment to 1x300 MW Power Plant, and the Lease and Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 ('IPRA Law,' x x x);

2. Whether x x x RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units ('LGUs,' x x x), pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;

3. Whether x x x Section 8.3 of DENR Administrative Order No. 2003-30 ('DAO No. 2003-30,' x x x) providing for the amendment of an ECC is null and void for being *ultra vires*; and

4. Whether x x x the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.

B. Respondent RP Energy

1. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked;

1.1 Whether x x x the same is valid until annulled;

2. Whether x x x petitioners exhausted their administrative remedies with respect to the amended ECC for the 1x300 MW Power Plant;

2.1 Whether x x x the instant Petition is proper;

How then did the issue of lack of signature arise?

A review of the voluminous records indicates that the matter of the lack of signature was discussed, developed or surfaced only in the course of the hearings, specifically, on clarificatory questions from the appellate court, to wit:

J. LEAGOGO:

I would also show to you your ECC, that's page 622 of the *rollo*. I am showing to you this Environmental Compliance Certificate dated December 22, 2008 issued by Sec. Jose L. Atienza, Jr. of the

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3. Whether x x x RP Energy complied with all the procedures/ requirements for the issuance of the DENR ECC and its amendment;

3.1 Whether x x x a Certificate of Non-Overlap from the National Commission on Indigenous Peoples is applicable in the instant case;

4. Whether x x x the LGU's approval under Sections 26 and 27 of the Local Government Code is necessary for the issuance of the DENR ECC and its amendments, and what constitutes LGU approval;

5. Whether x x x there is a threatened or actual violation of environmental laws to justify the Petition;

5.1 Whether x x x the approved 1x300 MW Power Plant complied with the accepted legal standards on thermal pollution of coastal waters, air pollution, water pollution, and acid deposits on aquatic and terrestrial ecosystems; and

6. Whether x x x the instant Petition should be dismissed for failure to comply with the requirements of proper verification and certification of non-forum shopping with respect to some petitioners.

C. Respondent DENR Secretary Paje

1. Whether x x x the issuance of the DENR ECC and its amendment in favor of RP Energy requires compliance with Section 59 of the IPRA Law, as well as Sections 26 and 27 of the Local Government Code;

2. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked in this proceeding; and

3. Whether x x x Section 8.3 of DAO No. 2003-30 is valid.

Concededly, the issue as to "whether x x x RP Energy complied with all the procedures/ requirements for the issuance of the DENR ECC and its amendment" is broad enough to include the issue of the lack of signature. That this was, however, contemplated by the parties or the appellate court is negated by the context in which the issue arose, as will be discussed in what follows.

DENR. This is your "Exhibit "18." Would you like to go over this? Are you familiar with this document?

MS. MERCADO:
Yes, it[']s my Annex "3," Your Honor.

J. LEAGOGO:
I would like to refer you to page 3 of the ECC dated December 22, 2008. Page 2 refers to the Environmental Compliance Certificate, ECC Ref. No. 0804-011-4021. That's page 2 of the letter dated December 22, 2008. And on page 3, Dr. Julian Amador recommended approval and it was approved by Sec. Atienza. You see that on page 3?

MS. MERCADO:
Yes, Your Honor.

J. LEAGOGO:
Okay. On the same page, page 3, there's a Statement of Accountability.

MS. MERCADO:
Yes, Your Honor.

J. LEAGOGO:
Luis, who is Luis Miguel Aboitiz?

MS. MERCADO:
During that time he was the authorized representative of RP Energy, Your Honor.

J. LEAGOGO:
Now, who is the authorized representative of RP Energy?

MS. MERCADO:
It would be Mr. Aaron Domingo, I believe.

J. LEAGOGO:
Please tell the Court why this was not signed by Mr. Luis Miguel Aboitiz, the Statement of Accountability?

Because the Statement of Accountability says, "Mr. Luis Miguel Aboitiz, Director, representing Redondo Peninsula Energy with office address located at 110 Legaspi Street, Legaspi Village, Makati City, takes full responsibility in complying with all conditions in this Environmental Compliance Certificate [ECC][.]" Will you tell this Court why this was not signed?

MS. MERCADO:

It was signed, Your Honor, but this copy wasn't signed. My apologies, I was the one who provided this, I believe, to the lawyers. This copy was not signed because during….

J. LEAGOGO:

But this is your exhibit, this is your Exhibit "18" and this is not signed. Do you agree with me that your Exhibit "18" is not signed by Mr. Aboitiz?

MS. MERCADO:

That's correct, Your Honor.[151]

We find this line of questioning inadequate to apprise the parties that the lack of signature would be a key issue in this case; as in fact it became decisive in the eventual invalidation of the ECC by the appellate court.

Concededly, a court has the power to suspend its rules of procedure in order to attain substantial justice so that it has the discretion, in exceptional cases, to take into consideration matters not originally within the scope of the issues raised in the pleadings or set during the preliminary conference, in order to prevent a miscarriage of justice. In the case at bar, the importance of the signature cannot be seriously doubted because it goes into the consent and commitment of the project proponent to comply with the conditions of the ECC, which is vital to the protection of the right to a balanced and healthful ecology of those who may be affected by the project.

Nonetheless, the power of a court to suspend its rules of procedure in exceptional cases does not license it to foist a surprise on the parties in a given case. To illustrate, in oral arguments before this Court, involving sufficiently important public interest cases, we note that individual members of the Court, from time to time, point out matters that may not have been specifically covered by the advisory (the advisory delineates the issues to be argued and decided). However, a directive is given to the concerned parties to discuss the aforesaid matters

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[151] TSN, December 12, 2012, pp. 63-67.

in their memoranda. Such a procedure ensures that, at the very least, the parties are apprised that the Court has taken an interest in such matters and may adjudicate the case on the basis thereof. Thus, the parties are given an opportunity to adequately argue the issue or meet the issue head-on. We, therefore, find that the appellate court should have, at the very least, directed RP Energy and the DENR to discuss and elaborate on the issue of lack of signature in the presentation of their evidence and memoranda, before making a definitive ruling that the lack thereof invalidated the ECC. This is in keeping with the basic tenets of due process.

At any rate, we shall disregard the procedural defect and rule directly on whether the lack of signature invalidated the ECC in the interest of substantial justice.

The laws governing the ECC, *i.e.*, Presidential Decree No. (PD) 1151 and PD 1586, do not specifically state that the lack of signature in the Statement of Accountability has the effect of invalidating the ECC. Unlike in wills or donations, where failure to comply with the specific form prescribed by law leads to its nullity,[152] the applicable laws here are silent with respect to the necessity of a signature in the Statement of Accountability and the effect of the lack thereof. This is, of course, understandable because the Statement of Accountability is a mere off-shoot of the rule-making powers of the DENR relative to the implementation of PD 1151 and PD 1586. To determine, therefore, the effect of the lack of signature, we must look at the significance thereof under the Environmental Impact Assessment (EIA) Rules of the DENR and the surrounding circumstances of this case.

To place this issue in its proper context, a helpful overview of the stages of the EIA process, taken from the Revised Manual, is reproduced below:

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[152] *See* CIVIL CODE, Art. 745 and 749.

Figure 1-3 Overview of Stages of the Philippine EIA Process[153]

1.0 SCREENING ⇩	**Screening** determines if a project is covered or not covered by the PEISS.[154] If a project is covered, screening further determines what document type the project should prepare to secure the needed approval, and what the rest of the requirements are in terms of EMB office of application, endorsing and decision authorities, duration of processing.
2.0 SCOPING ⇩	**Scoping** is a Proponent-driven multi-sectoral formal process of determining the focused Terms of Reference of the EIA Study. Scoping identifies the most significant issues/impacts of a proposed project, and then, delimits the extent of baseline information to those necessary to evaluate and mitigate the impacts. The need for and scope of an Environmental Risk Assessment (ERA) is also done during the scoping session. Scoping is done with the local community through Public Scoping and with a third party EIA Review Committee (EIARC) through Technical Scoping, both with the participation of the DENR-EMB. The process results in a signed Formal Scoping Checklist by the review team, with final approval by the EMB Chief.
3.0 EIA STUDY and REPORT PREPARATION ⇩	The **EIA Study** involves a description of the proposed project and its alternatives, characterization of the project environment, impact identification and prediction, evaluation of impact significance, impact mitigation, formulation of Environmental Management and Monitoring Plan, with corresponding cost estimates and institutional support commitment. The study results are presented in an **EIA Report** for which an outline is prescribed by EMB for every major document type.

[153] Revised Procedural Manual for DAO 2003-30 (Revised Manual), p. 15.

[154] Philippine Environmental Impact Statement System.

4.0 EIA REPORT REPORT and EVALUATION ⇩	**Review of EIA Reports** normally entails an EMB procedural screening for compliance with minimum requirements specified during Scoping, followed by a substantive review of either composed third party experts commissioned by EMB as the EIA Review Committee for PEIS/EIS-based applications, or DENR/EMB internal specialists, the Technical Committee, for IEE-based applications. EMB evaluates the EIARC recommendations and the public's inputs during public consultations/hearings in the process of recommending a decision on the application. The EIARC Chair signs EIARC recommendations including issues outside the mandate of the EMB. The entire EIA review and evaluation process is summarized in the Review Process Report (RPR) of the EMB, which includes a draft decision document.
5.0 DECISION MAKING ⇩	**Decision Making** involves evaluation of EIA recommendations and the draft decision document, resulting to the issuance of an ECC, CNC or Denial Letter. When approved, a covered project is issued its certificate of Environmental Compliance Commitment (ECC) while an application of a non-covered project is issued a Certificate of Non-Coverage (CNC). Endorsing and deciding authorities are designated by AO[155] 42, and further detailed in this Manual for every report type. Moreover, the Proponent signs a sworn statement of full responsibility on implementation of its commitments prior to the release of the ECC.[156] The ECC is then transmitted to concerned LGUs and other GAs for integration into their decision-making process. **The regulated part of EIA Review is limited to the processes within EMB control. The timelines for the issuance of decision documents provided for in AO 42 and DAO 2003-30 are applicable only from the time the EIA Report is accepted for substantive review to the time a decision is issued on the application.**
6.0 MONITORING. VALIDATION, and EVALUATION/ AUDIT	**Monitoring, Validation and Evaluation/Audit** stage assesses performance of the Proponent against the ECC and its commitments in the Environmental Management and Monitoring Plans to ensure actual impacts of the project are adequately prevented or mitigated.

[155] Administrative Order.

[156] Underline supplied for this sentence.

The signing of the Statement of Accountability takes place at the Decision-Making Stage. After a favorable review of its ECC application, the project proponent, through its authorized representative, is made to sign a sworn statement of full responsibility on the implementation of its commitments prior to the official release of the ECC.

The definition of the ECC in the Revised Manual highlights the importance of the signing of the Statement of Accountability:

> Environmental Compliance Certificate (ECC) - a certificate of Environmental Compliance Commitment to which the Proponent conforms with, after DENR-EMB explains the ECC conditions, **by signing the sworn undertaking of full responsibility over implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not currently covered by existing laws**. It is a document issued by the DENR/EMB after a positive review of an ECC application, certifying that the Proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC also provides guidance to other agencies and to LGUs on EIA findings and recommendations, which need to be considered in their respective decision-making process.[157] (Emphasis supplied)

As can be seen, the signing of the Statement of Accountability is an integral and significant component of the EIA process and the ECC itself. The evident intention is to bind the project proponent to the ECC conditions, which will ensure that the project will not cause significant negative environmental impacts by the "implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not currently covered

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[157] Revised Manual, p. 9 and Glossary, letter h; Section 3(d), Article I, DAO 2003-30.

by existing laws." Indeed, the EIA process would be a meaningless exercise if the project proponent shall not be strictly bound to faithfully comply with the conditions necessary to adequately protect the right of the people to a healthful and balanced ecology.

Contrary to RP Energy's position, we, thus, find that the signature of the project proponent's representative in the Statement of Accountability is necessary for the validity of the ECC. It is not, as RP Energy would have it, a mere formality and its absence a mere formal defect.

The question then is, was the absence of the signature of Mr. Aboitiz, as representative of RP Energy, in the Statement of Accountability sufficient ground to invalidate the ECC?

Viewed within the particular circumstances of this case, we answer in the negative.

While it is clear that the signing of the Statement of Accountability is necessary for the validity of the ECC, we cannot close our eyes to the particular circumstances of this case. So often have we ruled that this Court is not merely a court of law but a court of justice. We find that there are several circumstances present in this case which militate against the invalidation of the ECC on this ground.

We explain.

First, the reason for the lack of signature was not adequately taken into consideration by the appellate court. To reiterate, the matter surfaced during the hearing of this case on clarificatory questions by the appellate court, *viz*:

J. LEAGOGO:

Please tell the Court why this was not signed by Mr. Luis Miguel Aboitiz, the Statement of Accountability?

Because the Statement of Accountability says, "Mr. Luis Miguel Aboitiz, Director, representing Redondo Peninsula Energy with office address located at 110 Legaspi Street, Legaspi Village, Makati City, takes full responsibility in complying with all conditions in this Environmental Compliance Certificate [ECC][.]" Will you tell this Court why this was not signed?

MS. MERCADO:

It was signed, Your Honor, but this copy wasn't signed. My apologies, I was the one who provided this, I believe, to the lawyers. This copy was not signed because during...

J. LEAGOGO:

But this is your exhibit, this is your Exhibit "18" and this is not signed. Do you agree with me that your Exhibit "18" is not signed by Mr. Aboitiz?

MS. MERCADO:

That's correct, Your Honor.[158] (Emphasis supplied)

Due to the inadequacy of the transcript and the apparent lack of opportunity for the witness to explain the lack of signature, we find that the witness' testimony does not, by itself, indicate that there was a deliberate or malicious intent not to sign the Statement of Accountability.

Second, as previously discussed, the concerned parties to this case, specifically, the DENR and RP Energy, were not properly apprised that the issue relative to the lack of signature would be decisive in the determination of the validity of the ECC. Consequently, the DENR and RP Energy cannot be faulted for not presenting proof during the course of the hearings to squarely tackle the issue of lack of signature.

Third, after the appellate court ruled in its January 30, 2013 Decision that the lack of signature invalidated the ECC, RP Energy attached, to its Motion for Partial Reconsideration, a certified true copy of the ECC, issued by the DENR-EMB, which bore the signature of Mr. Aboitiz. The certified true copy of the ECC showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008.[159]

The authenticity and veracity of this certified true copy of the ECC was not controverted by the Casiño Group in its comment on RP Energy's motion for partial reconsideration before the appellate court nor in their petition before this Court. Thus, in

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[158] TSN, December 12, 2012, pp. 65-67.

[159] CA *rollo,* Volume XVII, pp. 7010-7011.

accordance with the presumption of regularity in the performance of official duties, it remains uncontroverted that the ECC on file with the DENR contains the requisite signature of Mr. Aboitiz in the Statement of Accountability portion.

As previously noted, the DENR and RP Energy were not properly apprised that the issue relative to the lack of signature would be decisive in the determination of the validity of the ECC. As a result, we cannot fault RP Energy for submitting the certified true copy of the ECC only after it learned that the appellate court had invalidated the ECC on the ground of lack of signature in its January 30, 2013 Decision.

We note, however, that, as previously discussed, the certified true copy of the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008 or two days after the ECC's official release on December 22, 2008. The afore-discussed rules under the Revised Manual, however, state that the proponent shall sign the sworn statement of full responsibility on implementation of its commitments **prior** to the release of the ECC. It would seem that the ECC was first issued, then it was signed by Mr. Aboitiz, and thereafter, returned to the DENR to serve as its file copy. Admittedly, there is lack of strict compliance with the rules although the signature is present. Be that as it may, we find nothing in the records to indicate that this was done with bad faith or inexcusable negligence because of the inadequacy of the evidence and arguments presented, relative to the issue of lack of signature, in view of the manner this issue arose in this case, as previously discussed. Absent such proof, we are not prepared to rule that the procedure adopted by the DENR was done with bad faith or inexcusable negligence but we remind the DENR to be more circumspect in following the rules it provided in the Revised Manual. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*.

Fourth, we partly agree with the DENR that the subsequent letter-requests for amendments to the ECC, signed by Mr. Aboitiz on behalf of RP Energy, indicate its implied conformity to the ECC conditions. In practical terms, if future litigation should

occur due to violations of the ECC conditions, RP Energy would be estopped from denying its consent and commitment to the ECC conditions even if there was no signature in the Statement of Accountability. However, we note that the Statement of Accountability precisely serves to obviate any doubt as to the consent and commitment of the project proponent to the ECC conditions. At any rate, the aforesaid letter-requests do additionally indicate RP Energy's conformity to the ECC conditions and, thus, negate a pattern to maliciously evade accountability for the ECC conditions or to intentionally create a "loophole" in the ECC to be exploited in a possible future litigation over non-compliance with the ECC conditions.

In sum, we rule that the appellate court erred when it invalidated the ECC on the ground of lack of signature of Mr. Aboitiz in the ECC's Statement of Accountability relative to the copy of the ECC submitted by RP Energy to the appellate court. While the signature is necessary for the validity of the ECC, the particular circumstances of this case show that the DENR and RP Energy were not properly apprised of the issue of lack of signature in order for them to present controverting evidence and arguments on this point, as the matter only developed during the course of the proceedings upon clarificatory questions from the appellate court. Consequently, RP Energy cannot be faulted for submitting the certified true copy of the ECC only after it learned that the ECC had been invalidated on the ground of lack of signature in the January 30, 2013 Decision of the appellate court.

The certified true copy of the ECC, bearing the signature of Mr. Aboitiz in the Statement of Accountability portion, was issued by the DENR-EMB and remains uncontroverted. It showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. Although the signing was done two days after the official release of the ECC on December 22, 2008, absent sufficient proof, we are not prepared to rule that the procedure adopted by the DENR was done with bad faith or inexcusable negligence. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*.

III.

Whether the first and second amendments to the ECC are invalid for failure to undergo a new environmental impact assessment (EIA) because of the utilization of inappropriate EIA documents.

Upholding the arguments of the Casiño Group, the appellate court ruled that the first and second amendments to the ECC were invalid because the ECC contained an express restriction that any expansion of the project beyond the project description shall be the subject of a new EIA. It found that both amendments failed to comply with the appropriate EIA documentary requirements under DAO 2003-30 and the Revised Manual. In particular, it found that the Environmental Performance Report and Management Plan (EPRMP) and Project Description Report (PDR), which RP Energy submitted to the DENR, relative to the application for the first and second amendments, respectively, were not the proper EIA document type. Hence, the appellate court ruled that the aforesaid amendments were invalid.

Preliminarily, we must state that executive actions carry presumptive validity so that the burden of proof is on the Casiño Group to show that the procedure adopted by the DENR in granting the amendments to the ECC were done with grave abuse of discretion. More so here because the administration of the EIA process involves special technical skill or knowledge which the law has specifically vested in the DENR.

After our own examination of DAO 2003-30 and the Revised Manual as well as the voluminous EIA documents of RP Energy appearing in the records of this case, we find that the appellate court made an erroneous interpretation and application of the pertinent rules.

We explain.

As a backgrounder, PD 1151 set the Philippine Environment Policy. Notably, this law recognized the right of the people to a healthful environment.[160] Pursuant thereto, in every action,

[160] Section 3 of PD 1151 provides:

SECTION 3. *Right to a Healthy Environment*. — In furtherance of these goals and policies, the Government recognizes the right of the people to a

project or undertaking, which significantly affects the quality of the environment, all agencies and instrumentalities of the national government, including government-owned or -controlled corporations, as well as private corporations, firms, and entities were required to prepare, file and include a statement (*i.e.*, Environmental Impact Statement or EIS) containing:

(a) the environmental impact of the proposed action, project or undertaking;

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.[161]

To further strengthen and develop the EIS, PD 1586 was promulgated, which established the Philippine Environmental Impact Statement System (PEISS). The PEISS is "a systems-oriented and integrated approach to the EIS system to ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations."[162] The ECC requirement is mandated under Section 4 thereof:

SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects*. The President of the Philippines may,

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healthful environment. It shall be the duty and responsibility of each individual to contribute to the preservation and enhancement of the Philippine environment.

[161] Section 4, PD 1151.

[162] Section 1, Article I, DAO 2003-30.

on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.** x x x (Emphasis supplied)

The PEISS consists of the Environmental Impact Assessment (EIA) process, which is mandatory for private or public projects that may significantly affect the quality of the environment. It involves evaluating and predicting the likely impacts of the project on the environment, designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.[163]

PD 1586 was implemented by DAO 2003-30 which, in turn, set up a system or procedure to determine when a project is required to secure an ECC and when it is not. When an ECC is not required, the project proponent procures a Certificate of Non-Coverage (CNC).[164] As part of the EIA process, the project proponent is required to submit certain studies or reports (*i.e.*, EIA document type) to the DENR-EMB, which will be used in the review process in assessing the environmental impact of the project and the adequacy of the corresponding environmental management plan or program to address such environmental impact. This will then be part of the bases to grant or deny the application for an ECC or CNC, as the case may be.

Table 1-4 of the Revised Manual summarizes the required EIA document type for each project category. It classifies a project as belonging to group I, II, III, IV or V, where:

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[163] Section 3(h), Article I,DAO 2003-30.

[164] Under Section 3(a), Article I of DAO 2003-30, a CNC is "a certification issued by the EMB certifying that, based on the submitted project description, the project is not covered by the EIS System and is not required to secure an ECC."

I- Environmentally Critical Projects (ECPs) in either Environmentally Critical Area (ECA) or Non-Environmentally Critical Area (NECA),

II- Non-Environmentally Critical Projects (NECPs) in ECA,

III- NECPs in NECA,

IV- Co-located Projects, and

V- Unclassified Projects.

The aforesaid table then further classifies a project, as pertinent to this case, as belonging to category A, B or C, where:

A- new;

B- existing projects for modification or re-start up; and

C- operating projects without an ECC.

Finally, the aforesaid table considers whether the project is single or co-located.[165] After which, it states the appropriate EIA document type needed for the application for an ECC or CNC, as the case may be.

The appropriate EIA document type vis-à-vis a particular project depends on the potential significant environmental impact of the project. At the highest level would be an ECP, such as the subject project. The hierarchy of EIA document type, based on comprehensiveness and detail of the study or report contained therein, insofar as single projects are concerned, is as follows:

1. Environmental Impact Statement[166] (EIS),

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[165] As distinguished from single projects, co-located projects/undertakings are defined under Section 3(b), Article I of DAO 2003-30 as "projects, or series of similar projects or a project subdivided to several phases and/or stages by the same proponent, located in contiguous areas."

[166] Section 3(k), Article I of DAO 2003-30 defines an EIS as a "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/ Program that the proponent will fund and implement to protect the environment."

2. Initial Environmental Examination[167] (IEE) Report,

3. Initial Environmental Examination[168] (IEE) Checklist Report,

4. Environmental Performance Report and Management Plan[169] (EPRMP), and

5. Project Description[170] (PD) or Project Description Report (PDR).

Thus, in the course of RP Energy's application for an ECC, it was required by the DENR-EMB to submit an EIS because the subject project is: an ECP, new and a single project.

The present controversy, however, revolves around, not an application for an ECC, but amendments thereto.

RP Energy requested the subject first amendment to its ECC due to its desire to modify the project design through the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel

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[167] Section 3(s), Article I of DAO 2003-30 defines an IEE as a "document similar to an EIS, but with reduced details and depth of assessment and discussion."

[168] Section 3(t), Article I of DAO 2003-30 defines an IEE Checklist Report as a "simplified checklist version of an IEE Report, prescribed by the DENR, to be filled up by a proponent to identify and assess a project's environmental impacts and the mitigation/enhancement measures to address such impacts."

[169] Section 3(p), Article I of DAO 2003-30 defines an EPRMP as a "documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECC's, *i.e.*, Category A-3. For Category B-3 projects, a checklist form of the EPRMP would suffice."

[170] Section 3(x), Article I of DAO 2003-30 defines a PD as a "document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects."

improvement and a 230-kV double transmission line. The DENR-EMB determined that this was a major amendment and, thus, required RP Energy to submit an EPRMP.

The Casiño Group argued, and the appellate court sustained, that an EPRMP is not the correct EIA document type based on the definition of an EPRMP in DAO 2003-30 and the Revised Manual.

In DAO 2003-30, an EPRMP is defined as:

> Environmental Performance Report and Management Plan (EPRMP) — documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are **already operating but without ECC's**, i.e., Category A-3. For Category B-3 projects, a checklist form of the EPRMP would suffice;[171] (Emphasis supplied)

Further, the table in Section 5 of DAO 2003-30 states that an EPRMP is required for "A-2: Existing and to be expanded (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion) and A-3: Operating without ECC."

On the other hand, the Revised Manual delineates when an EPRMP is the proper EIA document type, thus:

> For **operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations**, or for **projects operating without an ECC** but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. **This report is** x x x **an** x x x **Environmental Performance Report and Management Plan (EPRMP) for single project applications** x x x[172] (Emphasis supplied)

In its "Glossary," the Revised Manual defines an EPRMP as:

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[171] Section 3(p), Article I, DAO 2003-30.

[172] Section 1.0, paragraph 8 (b), Revised Manual.

Environmental Performance Report and Management Plan (EPRMP) - documentation of the actual cumulative environmental impacts and effectiveness of current measures **for single projects that are already operating but without ECCs**.[173] (Emphasis supplied)

Finally, Table 1-4, in the Revised Manual, states that an EPRMP is required for "Item I-B: Existing Projects for Modification or Re-start up (subject to conditions in Annex 2-1c) and I-C: Operating without ECC."

From these definitions and tables, an EPRMP is, thus, the required EIA document type for an ECP-single project which is:

1. Existing and to be expanded (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion);

2. Operating but without ECCs;

3. Operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations; and

4. Existing projects for modification or re-start up.

It may be observed that, based from the above, DAO 2003-30 and the Revised Manual appear to use the terms "operating" and "existing" interchangeably. In the case at bar, the subject project has not yet been constructed although there have been horizontal clearing operations at the project site.

On its face, therefore, the theory of the Casiño Group, as sustained by the appellate court — that the EPRMP is not the appropriate EIA document type— seems plausible because the subject project is not: (1) operating/existing with a previous ECC but planning or applying for modification or expansion, or (2) operating but without an ECC. Instead, the subject project is an unimplemented or a non-implemented, hence, non-operating project with a previous ECC but planning for modification or expansion.

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[173] Glossary, letter (t), Revised Manual.

The error in the above theory lies in the failure to consider or trace the ***applicable*** provisions of DAO 2003-30 and the Revised Manual ***on amendments*** to an ECC.

The proper starting point in determining the validity of the subject first amendment, specifically, the propriety of the EIA document type (*i.e.*, EPRMP) which RP Energy submitted in relation to its application for the aforesaid amendment, must of necessity be the rules on amendments to an ECC.[174] This is principally found in Section 8.3, Article II of DAO 2003-03, *viz*:

8.3 Amending an ECC

Requirements for processing ECC amendments shall depend on the nature of the request but **shall be focused on the information necessary to assess the environmental impact of such changes**.

8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.

8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.

8.3.3. For ECCs issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECCs issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECCs. (Emphasis supplied)

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[174] Parenthetically, we must mention that the validity of the rules providing for amendments to the ECC was challenged by the Casiño Group on the ground that it is *ultra vires* before the appellate court. [It] argued that the laws governing the ECC do not expressly permit the amendment of an ECC. However, the appellate court correctly ruled that the validity of the rules cannot be collaterally attacked. Besides, the power of the DENR to issue rules on amendments of an ECC is sanctioned under the doctrine of necessary implication. Considering that the greater power to deny or grant an ECC is vested by law in the President or his authorized representative, the DENR, there is no obstacle to the exercise of the lesser or implied power to amend the ECC for justifiable reasons. This issue was no longer raised before this Court and, thus, we no longer tackle the same here.

Implementing the afore-quoted section, the Revised Manual pertinently states in Section 2.2, paragraph 16:

16) Application Process for ECC Amendments

Figure 2-4 presents how Proponents may request for minor or major changes in their ECCs. Annex 2-1c provides a decision chart for the determination of requirements for project modifications, particularly for delineating which application scenarios will require EPRMP (which will be subject to Figure 2-1 process) or other support documentations (which will be subject to Figure 2-4 process).

Figure 2-4, in turn, provides:

Figure 2-4. Flowchart on Request for ECC Amendments[175]

Scenario 1: Request for Minor Amendments	**Scenario 2: Request for Major Amendments**
1. Typographical error 2. Extension of deadlines for submission of post-ECC requirement/s 3. Extension of ECC validity 4. Change in company name/ ownership 5. Decrease in land/project area or production capacity 6. Other amendments deemed "minor" at the discretion of the EMB CO/RO Director	1. Expansion of project area w/in catchment described in EIA 2. Increase in production capacity or auxiliary component of the original project 3. Change/s in process flow or technology 4. Addition of new product 5. Integration of ECCs for similar or dissimilar but contiguous projects (NOTE: ITEM#5 IS PROPONENT'S OPTION, NOT EMB'S) 6. Revision/Reformatting of ECC Conditions 7. Other amendments deemed "major" at the discretion of the EMB CO/ RO Director
1 [Start] Within three (3) years from ECC issuance (for projects not started)[176] OR at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a **LETTER-REQUEST** for ECC amendment, including data/	**1[Start]** Within three (3) years from ECC issuance (for projects not started)[177] OR

[175] Footnotes omitted.

[176] Underline supplied.

[177] Underline supplied.

information, reports or documents to substantiate the requested revisions.	at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a **LETTER-REQUEST** for ECC amendments, including data/information, reports or documents to substantiate the requested revisions.
↓	**2** For projects that have started implementation, EMB evaluates request based on **Annex 2-1c** for various scenarios of project modification. Documentary requirements may range from a Letter-Request to an EPRMP to the EMB CO/RO while for those with Programmatic ECC, a PEPRMP may need to be submitted to the EMB CO to support the request. It is important to note that for operating projects, the appropriate document is not an EIS but an EIA Report incorporating the project's historical environmental performance and its current EMP, subject to specific documentary requirements detailed in **Annex 2-1c** for every modification scenario.
2 The ECC-endorsing EMB office assigns a Case Handler to evaluate the request	3 ↓ For EPRMP/PEPRMP-based requests, EMB forms a Technical/Review Committee to evaluate the request. For other requests, a Case Handler may solely undertake the evaluation. EMB CO and RO will process P/EPRMP for PECC/ECC under Groups I and II respectively. (Go to **Figure 2-1**)
3 ↓ ECC-endorsing Authority decides on the Letter-Request, based on CH recommendation	4 ↓ ECC-endorsing/issuing Authority (per Table 1-4) decides on Letter Requests/EPRMP/PEPRMP/Other documents based on EMB CH and/or Tech/Review Committee recommendations.

Noteworthy in the above, which is pertinent to the issue at hand, is that the amendment process squarely applies to projects

Maximum Processing Time to Issuance of Decision		Max Processing Time to Issuance of Decision			
		CO PEPRMP	**CO EPRMP**	**RO PEPRMP**	**RO EPRMP**
EMB CO	**7 workdays**	**120 workdays**	**90 workdays**	**60 workdays**	**30 workdays**
EMB RO	**7 workdays**	Other document applications: max 30 workdays (EMB CO and RO)			

not started, such as the subject project, based on the phrase "[w]ithin three (3) years from ECC issuance (for projects not started) x x x."

Annex 2-1c, in turn, provides a "Decision Chart for Determination of Requirements For Project Modification." We reproduce below the first three columns of Annex 2-1c, as are pertinent to the issue at hand:

ANNEX 2-1c

DECISION CHART FOR DETERMINATION OF REQUIREMENTS FOR PROJECT MODIFICATION[178]

	Proposed Modifications to the Current Project	**Analysis of Proposed Modifications**	**Resulting Decision Document/Type of EIA Report Required** **Operational projects, or those which have stopped for ≤5 years and plan to re-start** **For Groups I and II EIS-based Projects with an ECC applying for modification**
1.	Expansion of land/project area w/in catchment or environment described in the original EIA Report	Since the modification will be in an area already described and evaluated in the original EIA Report, incremental impacts from additional land development will have been addressed in the approved EMP	**ECC Amendment** /Letter Request with brief description of activities in the additional area

[178] Footnotes omitted.

2.	Expansion of land/project area OUTSIDE catchment or environment described in the original EIA Report	It is assumed the modification proposal may have significant potential impacts due to absence of prior assessment as to how the project may affect the proposed expansion area	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)
3.	Increase in capacity or auxiliary component of the original project which will **either** not entail exceedance of PDR (non-covered project) thresholds **or** EMP & ERA can still address impacts & risks arising from modification	Non-exceedance of PDR (non covered project) threshold is assumed that impacts are not significant; Modification scenario and decision process are applicable to both non-implemented and operating projects issued ECCs	**ECC Amendment** /Letter Request with brief description of additional capacity or component
4.	Increase in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification	Exceedance of PDR (non-covered) threshold is assumed that impacts may be potentially significant, particularly if modification will result to a next higher level of threshold range Modification scenario and decision process are applicable to both non-implemented and operating projects with or without issued ECCs	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)
5.	Change/s in process flow or technology	EMP and ERA can still address impacts & risks arising from modification	**ECC Amendment** /Letter Request with brief process description
		EMP and ERA cannot address impacts & risks arising from modification	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)
6.	Additional component or products which will enhance the environment (e.g. due	Activity is directly lessening or mitigating the project's impacts on the environment. However, to ensure	**ECC Amendment** /Letter Request with consolidated Project Description Report

	to compliance to new stringent requirements) or lessen impacts on the environment (e.g. thru utilization of waste into new products)	there is no component in the modification which fall under covered project types, EMB will require disclosure of the description of the components and process with which the new product will be developed.	of new project component and integrated EMP
7.	Downgrade project size or area or other units of measure of thresholds limits	No incremental adverse impacts; may result to lower project threshold or may result to non-coverage	**From ECC Amendment to Relief of ECC Commitments (Conversion to CNC):** /Letter-Request only
8.	Conversion to new project type (e.g. bunker-fired plant to gas-fired)	Considered new application but with lesser data requirements since most facilities are established; environmental performance in the past will serve as baseline; However, for operating projects, there may be need to request for Relief from ECC Commitment prior to applying for new project type to ensure no balance of environmental accountabilities from the current project	**New ECC** /EIS
9.	Integration of ECCs for similar or contiguous project (Note: Integration of ECCs is at the option of the Proponent to request/apply)	No physical change in project size/area; no change in process/technology but improved management of continuous projects by having an integrated planning document in the form or an integrated ECC (ECC conditions will be harmonized across projects; conditions relating to requirements within other agencies'	**ECC Amendment** /Letter Request with consolidated Project Description Report and integrated EMP

		mandates will be deleted)	
10.	Revision/ Reformatting of ECC Conditions	No physical change on the project but ECC conditions relating to requirements within other agencies' mandates will be deleted	**ECC Amendment** /Letter Request only

We now apply these provisions to the case at bar.

To reiterate, the first amendment to the ECC was requested by RP Energy due to its planned change of project design involving the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement and a 230-kV double transmission line. The DENR-EMB determined[179] that the proposed modifications involved a major amendment because it will result in an increase in capacity or auxiliary component, as per Scenario 2, Item #2 of Figure 2-4:

Scenario 2: Request for Major Amendments

1. Expansion of project area w/in catchment described in EIA

2. Increase in production capacity or auxiliary component of the original project[180]

3. Change/s in process flow or technology

4. Addition of new product

5. Integration of ECCs for similar or dissimilar but contiguous projects (NOTE: ITEM#5 IS PROPONENT'S OPTION, NOT EMB'S)

6. Revision/Reformatting of ECC Conditions

7. Other amendments deemed "major at the discretion of the EMB CO/RO Director

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[179] *Rollo* (G.R. No. 207257), pp. 150-151. (DENR's Petition, pp. 29-30)

[180] Underline supplied.

The Casiño Group does not controvert this finding by the DENR-EMB and we find the same reasonably supported by the evidence on record considering that, among others, the construction of a 230-kV double transmission line would result in major activities outside the project site which could have significant environmental impacts.

Consequently, the amendment was considered as falling under Item#4 of Annex 2-1c, and, thus, the appropriate EIA document type is an EPRMP, *viz*:

4.	Increase in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification	Exceedance of PDR (non-covered) thresholds is assumed that impacts may be potentially significant, particularly if modification will result to a next higher level of threshold range Modification scenario and decision process are applicable to both non-implemented and operating projects with or without issued ECCs[181]	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)[182]

Note that the Chart expressly states that, "[m]odification scenario and decision process are applicable to both **non-implemented** and operating projects **with** or without ECCs."[183] To recall, the subject project has not been constructed and is not yet operational, although horizontal clearing activities have already been undertaken at the project site. Thus, the subject project may be reasonably classified as a non-implemented project with an issued ECC, which falls under Item#4 and, hence, an EPRMP is the appropriate EIA document type.

[181] Underline supplied.

[182] Underline supplied.

[183] Emphasis supplied.

This lengthy explanation brings us to a simple conclusion. The definitions in DAO 2003-30 and the Revised Manual, stating that the EPRMP is applicable to (1) operating/existing projects with a previous ECC but planning or applying for modification or expansion, or (2) operating projects but without an ECC, were **not** an exclusive list.

The afore-discussed provisions of Figure 2-4, in relation to Annex 2-1c, plainly show that the EPRMP can, likewise, be used as an appropriate EIA document type for a single, non-implemented project applying for a major amendment to its ECC, involving an increase in capacity or auxiliary component, which will exceed PDR (non-covered project) thresholds, or result in the inability of the EMP and ERA to address the impacts and risks arising from the modification, such as the subject project.

That the proposed modifications in the subject project fall under this class or type of amendment was a determination made by the DENR-EMB and, absent a showing of grave abuse of discretion, the DENR-EMB's findings are entitled to great respect because it is the administrative agency with the special competence or expertise to administer or implement the EIS System.

The apparent confusion of the Casiño Group and the appellate court is understandable. They had approached the issue with a legal training mindset or background. As a general proposition, the definition of terms in a statute or rule is controlling as to its nature and scope within the context of legal or judicial proceedings. Thus, since the procedure adopted by the DENR-EMB seemed to contradict or go beyond the definition of terms in the relevant issuances, the Casiño Group and the appellate court concluded that the procedure was infirm.

However, a holistic reading of DAO 2003-30 and the Revised Manual will show that such a legalistic approach in its interpretation and application is unwarranted. This is primarily because the EIA process is a system, not a set of rigid rules and definitions. In the EIA process, there is much room for flexibility in the

determination and use of the appropriate EIA document type as the foregoing discussion has shown.[184] To our mind, what should be controlling is the guiding principle set in DAO 2003-30 in the evaluation of applications for amendments to ECCs, as stated in Section 8.3 thereof: "[r]equirements for processing ECC amendments shall depend on the **nature of the request** but shall be focused on the **information necessary** to assess the environmental impact of such changes."[185]

This brings us to the next logical question, did the EPRMP provide the necessary information in order for the DENR-EMB

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[184] To illustrate the flexibility of the EIA documents used in the EIA process, we can look at the EPRMP itself. The contents of an EPRMP, under Section 5.2.5, Article II of DAO 2003-30, are as follows:

5.2.5. x x x

The EPRMP shall contain the following:

a. Project Description;

b. Baseline conditions for critical environmental parameters;

c. Documentation of the environmental performance based on the current/ past environmental management measures implemented;

d. Detailed comparative description of the proposed project expansion and/ or process modification with corresponding material and energy balances in the case of process industries[;] and

e. EMP based on an environmental management system framework and standard set by EMB.

As previously demonstrated, the EPRMP is not just used for ECPs, which are operating but without an ECC or operating with a previous ECC but planning for expansion or re-start, but for major amendments to a non-implemented project with a previous ECC, such as the subject project. Section 5.2.5(c), however, requires that an EPRMP should contain "[d]ocumentation of the environmental performance based on the current/past environmental management measures implemented." This would be inapplicable to a non-implemented project. Thus, the project proponent merely notes in the EPRMP that there are no current/past environmental management measures implemented because the project is not yet implemented. As can be seen, the use of the EPRMP is flexible enough to accommodate such different project types, whether implemented or not, for as long as the necessary information is obtained in order to assess the environmental impact of the proposed changes to the original project design/description.

[185] Emphasis supplied.

to assess the environmental impact of RP Energy's request relative to the first amendment?

We answer in the affirmative.

In the first place, the Casiño Group never attempted to prove that the subject EPRMP, submitted by RP Energy to the DENR-EMB, was insufficient for purposes of evaluating the environmental impact of the proposed modifications to the original project design. There is no claim that the data submitted were falsified or misrepresented. Neither was there an attempt to subpoena the review process documents of the DENR to establish that the grant of the amendment to the ECC was done with grave abuse of discretion or to the grave prejudice of the right to a healthful environment of those who will be affected by the project. Instead, the Casiño Group relied solely on the definition of terms in DAO 2003-30 and the Revised Manual, which approach, as previously discussed, was erroneous.

At any rate, we have examined the contents of the voluminous EPRMP submitted by RP Energy and we find therein substantial sections explaining the proposed changes as well as the adjustments that will be made in the environmental management plan in order to address the potential environmental impacts of the proposed modifications to the original project design. These are summarized in the "Project Fact Sheet"[186] of the EPRMP and extensively discussed in Section 4[187] thereof. Absent any

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[186] CA *rollo*, Volume IV, pp. 1129-1132.

[187] Excerpts from Section 4 of the EPRMP ("Baseline Environmental Conditions for Critical Environmental Parameters, Impact Assessment and Mitigation") are reproduced below:

4.1 The Land

4.1.1 Existing Condition

The proposed route of the transmission line will traverse grasslands with sloping terrain, ranging from 3-50% slopes as shown in Figure 30 and Figure 31. x x x

4.1.2 Impacts

Construction of the transmission line components will include minimal civil and electrical works. Tower structures will be pre-assembled in a workshop

claim or proof to the contrary, we have no bases to conclude that these data were insufficient to assess the environmental

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and transported to designated locations for erection and linkage. Excavation and clearing activities will be minimal and short-term, whilst generated spoils will be low/negligible in terms of volume.

x x x x x x x x x

4.1.3 Mitigation

Generated spoils will be used as backfill material for aesthetic rehabilitation and stabilisation, if necessary. Slope stabilisation, and inspection and testing of the transmission line components will be conducted prior to project turnover for quality assurance and structural integrity. Proper handling and transport of the tower structures, as well as safe practice for electrical works will be disseminated and complied with across all personnel and involved contractors.

An integrated foundation system consisting of combined footings will be employed in order to ensure adequate footing embedment and tower stabilization. Soil stabilisation and slope protection measures will be implemented to significantly reduce erosion potential of mountain soil.

Tower installation and related activities will only commence upon finalisation of agreement between the proponent and concerned stakeholders (*i.e.*, regulatory agencies). Disputes and discussions over lease agreement and right-of-way permitting works will be placed through due legal process of the SBMA.

x x x x x x x x x

4.2 The Water

x x x x x x x x x

4.2.1 Existing Condition

The Subic Bay is rich in marine biodiversity including coral reef areas, seagrass patches, fisheries and coastal resources. x x x

4.2.2 Impacts

The additional RPE project facilities, except for the transmission line, will have impacts on water quality and ecology for both freshwater and marine components, as these will be located along the coastline or involve the use of freshwater resources.

The construction phase entails earth-moving activities, both inland and offshore. The initial concern upon implementation of the project is the degradation of the reef area within the proposed RPE project site, resulting from high sediment influx either via soil erosion, surface run-off or re-suspension.

x x x x x x x x x

4.2.3 Mitigation

The following mitigating measures may be applied in order to minimize the potential impacts of the proposed project on marine resources. Whilst these

impact of the proposed modifications. In accordance with the presumption of regularity in the performance of official duties,

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measures will aid in minimizing the perceived impacts, mortalities of coastal resources may still occur as individuals of different coral and seagrass species have different levels of environmental sensitivity. Likewise, mortalities may also be influenced by a variety of factors unrelated to the proposed project such as water temperature fluctuations due to climatic phenomenon.

- Placing mooring buoys within the area encompassed by offshore construction work would allow construction barges to dock onto them during the construction of the coal pier and other offshore project facilities. The mooring buoys will negate the need to use chain anchors to prevent these vessels from drifting towards the reef or seagrass areas.
- During the driving of the pier piles, the use of silt curtains to minimise suspended sediments from reaching the coral community will aid the chance of survival of many coral colonies. The coral community in the area is dominated by massive growth forms which are more resilient to sedimentation compared to branching colonies. Whilst this is true, these massive forms still have a maximum tolerance threshold, hence the use of mitigating measures is imperative. Sediment curtains will greatly improve the chances of survival of these corals during the construction phase by constraining the movement of liberated silt.
- The operators of construction equipment, as well as contractors, will need to be informed of the location of the fragile coral community and seagrass bed in the area, so that they will work in a manner that will minimise the effects on these areas. This condition can be included in their contracts.
- Alignment and/or integration of mitigations with the Subic Coastal Resources Management Plan.
- Overall, the primary impact that needs to be mitigated is sedimentation resulting from heavy equipment manoeuvring to construct the coal pier and other structures and from increased traffic in the project area due to vehicles working inland and construction barges working offshore.

x x x x x x x x x

4.3 The Air

Baseline conditions for this module as reported in the EIS (GHD, 2008) are appropriate and sufficient to describe site conditions for the additional RPE components. A brief summary to highlight the key impacts and mitigation for this module are presented below.

the DENR-EMB must be deemed to have adequately assessed the environmental impact of the proposed changes, before granting the request under the first amendment to the subject ECC.

In sum, the Revised Manual permits the use of an EPRMP, as the appropriate EIA document type, for major amendments to an ECC, **even for an unimplemented or non-implemented project with a previous ECC,** such as the subject project. Consequently, we find that the procedure adopted by the DENR, in requiring RP Energy to submit an EPRMP in order to undertake the environmental impact assessment of the planned modifications to the original project design, relative to the first amendment to the ECC, suffers from no infirmity.

We apply the same framework of analysis in determining the propriety of a PDR, as the appropriate EIA document type, relative to the second amendment to the subject ECC.

Again, the Casiño Group, as sustained by the appellate court, relied on the definitions of a PDR in DAO 2003-30 and the Revised Manual:

4.3.1 Existing Condition

The air shed of the proposed project site falls under the category of Type I climate, which is characterized by two pronounced seasons, generally dry season from December to May, and wet season from June to November.

4.3.2 Impacts

Dust and noise generation resulting from earthmoving activities (*i.e.*, excavation, scraping and leveling methods) is of significant concern. Concentration of suspended particulates in the atmosphere is likely to increase for the duration of the construction phase. Similarly, high noise levels within the immediate impact area will be experienced.

4.3.3 Mitigation

The proponent will implement control measures addressed at reducing noise levels and dust concentrations. Regular wetting of construction grounds, as well as putting up perimeter wall around major construction areas will limit the re-suspension of dust. Installation of noise barriers (*i.e.*, vegetation buffer, noise wall) around the construction area and noise reduction technology for vehicles and equipment (*i.e.*, mufflers) will significantly reduce the impacts of construction noise to nearby communities. In addition, construction activities contributing to high-noise levels will be scheduled during daytime. x x x (CA *rollo*, Volume IV, pp. 1193-1194, 1200-1201, 1204)

Project Description (PD) — document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects.[188]

x x x x x x x x x

a) For new projects: x x x For non-covered projects in Groups II and III, a x x x Project Description Report (PDR) is the appropriate document to secure a decision from DENR/EMB. The PDR is a "must" requirement for environmental enhancement and mitigation projects in both ECAs (Group II) and NECAs (Group III) to allow EMB to confirm the benign nature of proposed operations for eventual issuance of a Certificate of Non-Coverage (CNC). All other Group III (non-covered) projects do not need to submit PDRs – application is at the option of the Proponent should it need a CNC for its own purposes, e.g. financing pre-requisite. For Group V projects, a PDR is required to ensure new processes/technologies or any new unlisted project does not pose harm to the environment. The Group V PDR is a basis for either issuance of a CNC or classification of the project into its proper project group.

b) For operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations, or for projects operating without an ECC but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. This report is either an ***(6)*** Environmental Performance Report and Management Plan (EPRMP) for single project applications or a ***(7)*** Programmatic EPRMP (PEPRMP) for co-located project applications. However, for small project modifications, an updating of the project description or the Environmental Management Plan with the use of the proponent's historical performance and monitoring records may suffice.[189]

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[188] Section 3(x), Article I, DAO 2003-30.

[189] Section 1.0, paragraph 8 (a) and (b), Revised Manual.

x x x x x x x x x

Project Description (PD) - document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases.[190]

We will no longer delve into the details of these definitions. Suffice it to state, similar to the discussion on the EPRMP, that if we go by the strict limits of these definitions, the PDR relative to the subject second amendment would not fall squarely under any of the above.

However, again, these are not the only provisions governing the PDR in the Revised Manual.

After the favorable grant of the first amendment, RP Energy applied for another amendment to its ECC, this time in consideration of its plan to change the configuration of the project from 2 x 150 MW to 1 x 300 MW. In practical terms, this meant that the subject project will still produce 300 MW of electricity but will now make use of only one boiler (instead of two) to achieve greater efficiency in the operations of the plant. The DENR-EMB determined[191] this amendment to be minor, under Scenario 1, Item#6 of Figure 2-4:

<u>Scenario 1: Request for Minor Amendments</u>

1. Typographical error
2. Extension of deadlines for submission of post-ECC requirement/s
3. Extension of ECC validity
4. Change in company name/ownership
5. Decrease in land/project area or production capacity

[190] Glossary, letter aa, Revised Manual.

[191] *Rollo* (G.R. No. 207257), pp. 151-152. (DENR's Petition pp. 30-31)

6. Other amendments deemed "minor" at the discretion of the EMB CO/RO Director[192]

— because (1) there is no increase in capacity; (2) it does not constitute any significant impact; and (3) its EMP and ERA as specified in the submitted EPRMP remain the same.[193] Relative to Annex 2-1c, the requested amendment was, in turn, determined to fall under Item#3:

3.	Increase in capacity or auxiliary component of the original project which will either not entail exceedance of PDR (non-covered project) thresholds or EMP & ERA can still address impacts & risks arising from modification	Non-exceedance of PDR (non covered project) thresholds is assumed that impacts are not significant; Modification scenario and decision process are applicable to both non-implemented and operating projects issued ECCs[194]	**ECC Amendment** /Letter Request with brief description of additional capacity or component[195]

We make the same observation, as before, that the above applies to an unimplemented or non-implemented project with a previous ECC, like the subject project. Although it may be noted that the proposed modification does not squarely fall under Item#3, considering that, as previously mentioned, there will be no increase in capacity relative to the second amendment, still, we find nothing objectionable to this classification by the DENR-EMB, for it seems plain enough that this classification was used because the modification was deemed too minor to require a detailed project study like an EIS or EPRMP. Since this is the classification most relevant and closely related to the intended amendment, following the basic precept that the greater

[192] Underline supplied.

[193] *Supra* note 191.

[194] Underline supplied.

[195] Underline supplied.

includes the lesser, the DENR-EMB reasonably exercised its discretion in merely requiring a letter request with a brief description of the modification.

As earlier noted, the PDR is the EIA document type with the least detail, and, thus, applicable to such minor modifications. Thus, the DENR-EMB cannot be faulted for requiring RP Energy to submit a PDR relative to its application for the second amendment. Consequently, as before, we find that the Revised Manual supports the procedure adopted by the DENR-EMB in requiring RP Energy to submit a PDR in order to assess the environmental impact of the planned modifications relative to the second amendment.

In their Petition before this Court, the Casiño Group boldly asserts that "[t]here is nothing in the Project Description Report that provides an environmental impact assessment of the effects of constructing and operating a single 300-MW generating unit."[196] However, to our dismay, as in their other serious allegations in their Petition for Writ of *Kalikasan*, the same is, likewise, baseless. Apart from such a sweeping claim, the Casiño Group has provided no evidence or argument to back up the same.

An examination of the PDR readily reveals that it contains the details of the proposed modifications[197] and an express finding that no significant environmental impact will be generated by such modifications, as in fact it is expected that the operation of the power plant will become more efficient as a result of the change from 2 x 150 MW to 1 x 300 MW configuration.[198] Consequently, the PDR merely reiterates the same mitigating measures that will presumably address the minor modifications

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[196] *Rollo* (G.R. No. 207282) p. 9. (Casiño Group Petition, p. 8)

[197] CA *rollo*, Volume V, pp. 1444-1448.

[198] The PDR states, in part:

RPE now proposes to construct a single high-efficiency 300-MW (net) circulating-fluidized-bed coal-fired generating unit for Phase 1 of the project, instead of two less-efficient 150-MW units, the environmental impacts of which are unchanged from the original proposal. (CA *rollo*, Volume V, p. 1441)

to the project design. Again, no evidence was presented to show substantial errors or misrepresentations in these data or their inadequacy for providing the bases for the DENR-EMB to assess the environmental impact of the proposed modifications under the second amendment.

In fine, absent proof to the contrary, bearing in mind that allegations are not proof, we sustain the procedure adopted by the DENR-EMB in requiring RP Energy to submit a PDR and, on the basis thereof, approving the request for the second amendment.

In another vein, we note that the appellate court proceeded from the erroneous premise that the EIA is a document, when it repeatedly stated that the amendments to the ECC require a new EIA, and not merely an EPRMP or PDR. The appellate court relied on the *proviso* in the ECC, which stated that "[a]ny expansion of the project beyond the project description or any change in the activity or transfer of location shall be subject to a new Environmental Impact Assessment."[199]

However, as correctly pointed out by the DENR and RP Energy, the EIA is not a document but a process:

> Environmental Impact Assessment (EIA) — **process** that involves evaluating and predicting the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare. The process is undertaken by, among others, the project proponent and/or EIA Consultant, EMB, a Review Committee, affected communities and other stakeholders.[200] (Emphasis supplied)

When the *proviso* in the ECC, therefore, states that a new EIA shall be conducted, this simply means that the project proponent shall be required to submit such study or report, as

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[199] *Rollo* (G.R. No. 207257), p. 68.

[200] Section 3(h), Article I, DAO 2003-30.

warranted by the DENR Rules and circumstances, which will sufficiently aid the DENR in making a new EIA and, thus, determine whether to grant the proposed amendment (or project modification). As we have seen, consistent with DAO 2003-30 and the Revised Manual, the DENR required RP Energy to submit an EPRMP and a PDR relative to the latter's request involving the first and second amendments, respectively, which led to the new EIA of the project in compliance with the *proviso* of the ECC.

Verily, the various EIA documents, such as the EPRMP and PDR, are mere tools used by the DENR to assess the environmental impact of a particular project. These documents are flexibly used by the DENR, as the circumstances warrant, in order to adequately assess the impacts of a new project or modifications thereto. Being the administrative agency entrusted with the determination of which EIA document type applies to a particular application for an amendment to an ECC, falling as it does within its particular technical expertise, we must accord great respect to its determination, absent a showing of grave abuse of discretion or patent illegality.

In sum, we find that the appellate court erred when it ruled that the first and second amendments to the subject ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. The appellate court failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual on amendments to ECCs. Our examination of the provisions on amendments to ECCs, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments.

IV.

Whether the Certificate of Non-Overlap (CNO), under Section 59 of the IPRA Law, is a precondition to the issuance of an ECC and the lack of its prior issuance rendered the ECC invalid.

The appellate court ruled that the ECC issued in favor of RP Energy on December 22, 2008 is invalid because the CNO covering the subject project was issued only on October 31, 2012 or almost four years from the time of issuance of the ECC. Thus, the ECC was issued in violation of Section 59 of the IPRA Law and its implementing rules which require that a CNO be obtained prior to the issuance of a government agency of, among others, a license or permit. In so ruling, the appellate court implicitly upheld the Casiño Group's argument that the ECC is a form of government license or permit pursuant to Section 4 of PD 1586 which requires all entities to secure an ECC before (1) engaging in an environmentally critical project or (2) implementing a project within an environmentally critical area.

The DENR and RP Energy, however, argue that an ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules as may be deduced from the definition, nature and scope of an ECC under DAO 2003-03 and the Revised Manual. The DENR explains that the issuance of an ECC does not exempt the project proponent from securing other permits and clearances as required under existing laws, including the CNO, and that the final decision on whether a project will be implemented lies with the concerned local government unit/s or the lead government agency which has sectoral mandate to promote the government program where the project belongs.

We agree with the DENR and RP Energy.

Section 59, Chapter VIII of the IPRA Law provides:

SEC. 59. *Certification Precondition*. **All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any** concession, **license** or lease, or entering into any production-sharing agreement, **without prior**

certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis supplied)

While Section 9, Part II, Rule VIII of National Commission on Indigenous Peoples (NCIP) Administrative Order No. 01-98[201] states:

SECTION 9. Certification Precondition Prior to Issuance of any Permits or Licenses. —

a. Need for Certification. **No department of government or other agencies shall issue, renew or grant any** concession, **license**, lease, **permit**, or enter into any production sharing agreement **without a prior certification from the NCIP that the area affected does not overlap any ancestral domain**.

b. Procedure for Issuance of Certification by NCIP.

1) The certification, above mentioned, shall be issued by the Ancestral Domain Office, only after a field based investigation that such areas are not within any certified or claimed ancestral domains.

2) The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of all the households comprising the concerned ICCs/IPs. (Emphasis supplied)

As may be deduced from its subtitle, Section 59 requires as a *precondition,* relative to the issuance of any concession, license,

[201] Rules and Regulations implementing Republic Act No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997."

lease or agreement over natural resources, a certification issued by the NCIP that the area subject thereof does not lie within any ancestral domain.[202] This is in keeping with the State policy to protect the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) to their ancestral domains in order to ensure their economic, social and cultural well-being as well as to recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of such ancestral domain.[203]

The IPRA Law and its implementing rules do not define the terms "license" and "permit" so that resort to their plain or ordinary meaning in relation to the intendment of the law is appropriate.

A "license" has been defined as "a governmental permission to perform a particular act (such as getting married), conduct a particular business or occupation, operate machinery or vehicles after proving capacity and ability to do so safely, or use property for a certain purpose"[204] while a "permit" has been defined as "a license or other document given by an authorized public official or agency (building inspector, department of motor vehicles) to allow a person or business to perform certain acts."[205]

The evident intention of Section 59, in requiring the CNO prior to the issuance of a license or permit, is to prevent the implementation of a project that may impair the right of ICCs/ IPs to their ancestral domains. The law seeks to ensure that a project will not overlap with any ancestral domain prior to its implementation and thereby pre-empt any potential encroachment of, and/or damage to the ancestral domains of ICCs/IPs without their prior and informed consent.

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[202] *Cruz v. Sec. of Environment & Natural Resources*, 400 Phil. 904, 1012 (2000).

[203] RA 8371, Section 2 (b).

[204] <http://legal-dictionary.thefreedictionary.com/license> (visited 27 November 2014).

[205] <http://legal-dictionary.thefreedictionary.com/permit> (visited 27 November 2014).

With these considerations in mind, we now look at the definition, nature and scope of an ECC in order to determine if it falls within the ambit of a "license" or "permit" to which the CNO requirement, under Section 59 of the IPRA Law and its implementing rules, finds application.

Section 4 of PD 1586 provides, in part:

SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects*. — The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.** For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities. (Emphasis supplied)

While the above statutory provision reveals that the ECC is an indispensable requirement before (1) the conduct of an environmentally critical project or (2) the implementation of a project in an environmentally critical area, it does not follow that the ECC is the "license" or "permit" contemplated under Section 59 of the IPRA Law and its implementing rules.

Section 3(d), Article I of DAO 2003-03 defines an ECC in this wise:

SECTION 3. Definition of Terms. —

For the purpose of this Order, the following definitions shall be applied:

x x x x x x x x x

d. Environmental Compliance Certificate (ECC) — document issued by the DENR/EMB after a positive review of an ECC application, certifying that based on the representations of the proponent, the proposed project or undertaking will not cause

significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts.

In turn, Section 1.0, paragraphs 3 and 6 of the Revised Manual provide, in part:

<u>3) Purpose of the EIA Process</u>
As a basic principle, EIA is used to enhance planning and guide decision-making. In this Manual, EIA is primarily presented in the context of a requirement to integrate environmental concerns in the planning process of projects at the feasibility stage. Through the EIA Process, adverse environmental impacts of proposed actions are considerably reduced through a reiterative review process of project siting, design and other alternatives, and the subsequent formulation of environmental management and monitoring plans. A positive determination by the DENR-EMB results to the issuance of an Environmental Compliance Commitment (ECC) document, to be conformed to by the Proponent and represents the project's Environmental Compliance Certificate. **The release of the ECC allows the project to proceed to the next stage of project planning, which is the acquisition of approvals from other government agencies and LGUs, after which the project can start implementation.**

x x x x x x x x x

<u>6) The EIA Process in Relation to Other Agencies' Requirements</u>
It is inherent upon the EIA Process to undertake a comprehensive and integrated approach in the review and evaluation of environment-related concerns of government agencies (GAs), local government units (LGUs) and the general public. The subsequent EIA findings shall provide guidance and recommendations to these entities as a basis for their decision making process.

a) An Inter-agency MOA on EIS Streamlining was entered into in 1992 by 29 government agencies wherein ECC of covered projects was agreed to be a pre-requisite of all other subsequent government approvals;

b) DENR Memo Circular No. 2007-08 issued on 13 July 2007 reiterates in effect the intent of the MOA and reinforces the role of the ECC/CNC **as a guidance document to other agencies and LGUs**, as follows:

i) "No permits and/or clearances issued by other National Government Agencies and Local Government Units shall be required in the processing of ECC or CNC applications.

ii) The findings and recommendations of the EIA shall be transmitted to relevant government agencies for them to integrate in their decision making prior to the issuance of clearances, permits and licenses under their mandates.

iii) The issuance of an ECC or CNC for a project under the EIS System does not exempt the Proponent from securing other government permits and clearances as required by other laws. The current practice of requiring various permits, clearances and licenses only constrains the EIA evaluation process and negates the purpose and function of the EIA."

iv) Henceforth, all related previous instructions and other issuances shall be made consistent with the Circular.

c) "Permits, licenses and clearances" are inclusive of other national and local government approvals such as endorsements, resolutions, certifications, plans and programs, which have to be cleared/approved or other government documents required within the respective mandates and jurisdiction of these agencies/LGUs.

x x x x x x x x x

f) **The final decision whether a project will be implemented or not lies either with the LGUs who have spatial jurisdiction over the project or with the lead government agency who has sectoral mandate to promote the government program where the project belongs**, e.g. DOE for energy projects; DENR-MGB for mining projects. (Emphasis supplied)

As can be seen, the issuance of the ECC does not, by and of itself, authorize the implementation of the project. Although it is indispensable before the covered project can be commenced, as per Section 4 of PD 1586, the issuance of the ECC does not, as of yet, result in the implementation of the project. Rather, the ECC is intended to, among others, provide guidance or act as a decision-making tool to other government agencies and LGUs which have the final authority to grant licenses or permits, such as building permits or licenses to operate, that will ultimately result in, or authorize the implementation of the project or the conduct of specific activities.

As a consequence, we find that the CNO requirement under Section 59 of the IPRA Law is not required to be obtained prior to the issuance of an ECC. As previously discussed, Section 59 aims to forestall the implementation of a project that may impair the right of ICCs/IPs to their ancestral domains, by ensuring or verifying that a project will not overlap with any ancestral domain prior to its implementation. However, because the issuance of an ECC does not result in the implementation of the project, there is no necessity to secure a CNO prior to an ECC's issuance as the goal or purpose, which Section 59 seeks to achieve, is, at the time of the issuance of an ECC, not yet applicable.

In sum, we find that the ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity to secure the CNO under Section 59 before an ECC may be issued and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid.

V.

Whether the Certificate of Non-Overlap (CNO), under Section 59 of the IPRA Law, is a precondition to the consummation of the Lease and Development Agreement (LDA) between SBMA and RP Energy and the lack of its prior issuance rendered the LDA invalid.

We now turn to the applicability of Section 59 of the IPRA Law to the LDA entered into between the SBMA and RP Energy

on June 8, 2010. Similar to the ECC, the LDA was entered into prior to the issuance of the CNO on October 31, 2012.

Before this Court, SBMA and RP Energy reiterate their arguments on why the CNO is no longer necessary in the instant case, to wit:

1. Prior to entering into the LDA with RP Energy, SBMA entered into a lease agreement with HHIC[206]-Philippines, Inc. and a CNO was already issued therefor which, for all intents and purposes, is applicable to the area leased by RP Energy being part of contiguous lots in Redondo Peninsula.
2. The site of the power plant project is very distant from the boundaries of the lone area at the Subic Bay Freeport Zone covered by an Aeta Community's Certificate of Ancestral Domain Title (CADT).
3. There was no indigenous community within the vicinity of the project area as stated in RP Energy's EIS.
4. The land where the project is located was subsequently classified as industrial by the SBMA.
5. The scoping/procedural screening checklist classified as "not relevant" the issue of indigenous people.
6. Ms. Mercado, who was part of the team which prepared the EIS, testified that she visited the project site ten or more times and did not see any Aeta communities there.
7. Mr. Evangelista testified that the project site used to be a firing range of the U.S. Armed Forces which would make it impossible to be a settlement area of indigenous communities.
8. Atty. Rodriguez stated that the project site is not covered by a CADT and that from the start of negotiations on the LDA, the SBMA Ecology Center verified with the NCIP that there was no application for said area to be covered by a CADT.

[206] Hanjin Heavy Industries and Construction.

RP Energy further argues that, in any case, as a matter of prudence, it secured a CNO from the NCIP. On October 31, 2012, the NCIP issued the subject CNO over the project site, which should erase any doubt as to whether it overlaps with an ancestral domain.

Upholding the arguments of the Casiño Group, the appellate court ruled that SBMA failed to comply with the CNO requirement and, thus, the LDA entered into between SBMA and RP Energy is invalid. It rejected the reasons given by SBMA and RP Energy, to wit:

1. RP Energy's reliance on its own field investigation that no indigenous community was found within the vicinity is unavailing because it was not the field investigation by the NCIP required by the IPRA Law.
2. RP Energy acknowledged that Aetas were among the earliest settlers in the municipality where the project will be built. Hence, it was not clearly shown that in 2008, at the time the LDA was entered into, there were no indigenous communities in the project site.
3. SBMA's representation that the project site is industrial relies on a letter dated March 5, 2008 and the scoping checklist, which are hearsay evidence.
4. The statements of Atty. Rodriguez have no probative value because he is not an officer of SBMA Ecology Center or an officer of NCIP.
5. At the time the CNO was issued on October 31, 2012, and the field investigation relative thereto was conducted by the NCIP, the project site no longer reflected the actual condition on December 22, 2008 when the LDA was entered into because the households which occupied the site had already been relocated by then.
6. SBMA, prior to entering into a lease agreement with HHIC, secured a CNO, but oddly did not do the same with respect to the lease agreement with RP Energy, considering that both leases cover lands located within

the same peninsula. RP Energy appears to have been accorded a different treatment.

7. The CNO issued in favor of HHIC cannot justify the lack of a CNO for the power plant project because the two projects are situated in different locations: the HHIC project is located in *Sitio Agusuhin,* while the power plant project is located in *Sitio Naglatore*.

While we agree with the appellate court that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy, and not after, as was done here, we find that, under the particular circumstances of this case, the subsequent and belated compliance with the CNO requirement does not invalidate the LDA.

For convenience, and as starting point of our analysis, we reproduce Section 59 of the IPRA Law below:

SEC. 59. *Certification Precondition*. **All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any** concession, license or **lease**, or entering into any production-sharing agreement, **without prior certification from the NCIP that the area affected does not overlap with any ancestral domain**. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis supplied)

The law is clear but its actual operation or application should not be interpreted beyond the bounds of reason or practicality.

We explain.

Indeed, a CNO is required prior to the grant of a lease by all government agencies, including the SBMA. Again, the evident

intention is to prevent the impairment of the right of ICCs/IPs to their ancestral domains. A lease, such as the LDA under consideration, would result in, among others, granting RP Energy the right to the use and enjoyment of the project site to the exclusion of third parties.[207] As such, the lease could conceivably encroach on an ancestral domain if the CNO is not first obtained.

However, implicit in the operation of Section 59 is the practical reality that the concerned government agency must make a *preliminary determination* on whether or not to obtain the required certification in the first place. To expound, a government agency, which wishes to lease part of its property located near Padre Faura Street, Manila City could not, and should not be reasonably expected to obtain the CNO, as it is obviously inapplicable to its planned lease. In contrast, a government agency, which intends to lease a property in a valley or mountainous region, where indigenous communities are known to reside, conduct hunting activities, perform rituals, or carry out some other activities, should be reasonably expected to secure the CNO prior to consummating the planned lease with third persons.

Even if the indigenous community does not actually reside on the proposed lease site, the government agency would still be required to obtain the CNO ***precisely*** to rule out the possibility that the proposed lease site encroaches upon an ancestral domain. The reason for this is that an ancestral domain does not only cover the lands actually occupied by an indigenous community, but all areas where they have a claim of ownership, through time immemorial use, such as hunting, burial or worship grounds and to which they have traditional access for their subsistence and other traditional activities.[208]

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[207] Article 1643 of the Civil Code provides:

ARTICLE 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

[208] This is the clear import of the definition of "ancestral domains" in Section 3(a) of the IPRA Law, *viz*:

SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

The wording of the law itself seems to presuppose that if the concession, lease, license or production-sharing agreement is over natural resources, then the CNO should be first obtained. This is because the last term, "production-sharing agreement," normally refers to natural resources. But the problem arises as to what should be considered "natural resources"; for a vacant lot, near Padre Faura Street, or a forest land, in Mt. Banahaw, could both be considered as "natural resources," depending on the restrictive or expansive understanding of that term.

After due consideration, we find that the proper rule of action, for purposes of application of Section 59, is that all government offices should undertake proper and reasonable diligence in making a preliminary determination on whether to secure the CNO, bearing in mind the primordial State interest in protecting the rights of ICCs/IPs to their ancestral domains. They should consider the nature and location of the areas involved; the historical background of the aforesaid areas relative to the occupation, use or claim of ownership by ICCs/IPs; the present and actual condition of the aforesaid areas like the existence of ICCs/IPs within the area itself or within nearby territories; and such other considerations that would help determine whether a CNO should be first obtained prior to granting a concession, lease, license or permit, or entering into a production-sharing agreement.

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a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, **and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators**; x x x (Emphasis supplied)

If there are circumstances that indicate that a claim of ownership by ICCs/IPs may be present or a claim of ownership may be asserted in the future, *no matter how remote*, the proper and prudent course of action is to obtain the CNO. In case of doubt, the doubt should be resolved in favor of securing the CNO and, thus, the government agency is under obligation to secure the aforesaid certification in order to protect the interests and rights of ICCs/IPs to their ancestral domains. This must be so if we are to accord the proper respect due to, and adequately safeguard the interests and rights of, our brothers and sisters belonging to ICCs/IPs in consonance with the constitutional policy[209] to promote and protect the rights of ICCS/IPs as fleshed out in the IPRA Law and its implementing rules.

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[209] The following are the relevant constitutional provisions:

Article II, Section 22: The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Article XII, Section 5: The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domain.

ARTICLE XIV, Section 17: The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

ARTICLE XIII, Section 6: The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Article XVI, Section 12: The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

In the case at bar, we find, applying this rule of action, that the SBMA should have first secured a CNO before entering into the LDA with RP Energy for the following reasons.

First, the Subic area is historically known to be the home of our brothers and sisters belonging to the Aeta communities. In particular, the EIS[210] itself of RP Energy noted that Aeta communities originally occupied the proposed project site of the power plant. Thus, even if we assume that, at the time of the ocular inspection of the proposed project site in 2008, there were no Aeta communities seen thereat, as claimed by RP Energy, the exercise of reasonable prudence should have moved SBMA and RP Energy to secure a CNO in order to rule out the possibility that the project site may overlap with an ancestral domain. This is especially so, in view of the observation previously made, that lack of actual occupation by an indigenous community of the area does not necessarily mean that it is not a part of an ancestral domain because the latter encompasses areas that are not actually occupied by indigenous communities but are used for other purposes like hunting, worship or burial grounds.

Second, SBMA and RP Energy claim that the SBMA Ecology Center verified with the NCIP that the project site does not

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Article VI, Section 5(2): The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

[210] RP Energy's EIS dated September 2008 stated, in part:

4.4.1.1.4 Indigenous People

The Aetas are acknowledged to be one of the earliest settlers in the municipality. Historically, as lowlanders came to Subic, Aetas were displaced and were forced to flee to the hinterlands. While a number of Aetas have managed to be integrated within the mainstream of development activities in the municipality, many have remained deprived of public services such as health, social welfare and basic education. Aeta families are scattered in some *barangays* in Subic, such as: Batiawan and Naugsol. There are no Aeta communities identified within the vicinity of the project areas." (CA *rollo*, Volume III, p. 857)

overlap with an ancestral domain. However, the person, who allegedly did the verification, and the officer from the NCIP, who was contacted in this alleged verification, were not presented in court. Assuming that this verification did take place and that the SBMA Ecology Center determined that there is no pending application for a CADT covering the project site and that the presently recognized CADT of Aeta communities is too far away from the project site, it still does not follow that the CNO under Section 59 should have been dispensed with.

The acts of individual members of a government agency, who allegedly checked with the NCIP that the project site does not overlap with an ancestral domain, cannot substitute for the CNO required by law. The reason is obvious. Such posture would circumvent the noble and laudable purposes of the law in providing the CNO as the appropriate mechanism in order to validly and officially determine whether a particular project site does not overlap with an ancestral domain. It would open the doors to abuse because a government agency can easily claim that it checked with the NCIP regarding any application for an ancestral domain over a proposed project site while stopping short of securing a CNO. To reiterate, the legally mandated manner to verify if a project site overlaps with an ancestral domain is the CNO, and not through personal verification by members of a government agency with the NCIP.

Third, that the project site was formerly used as the firing range of the U.S. Armed Forces does not preclude the possibility that a present or future claim of ancestral domain may be made over the aforesaid site. The concept of an ancestral domain indicates that, even if the use of an area was interrupted by the occupation of foreign forces, it may still be validly claimed to be an ancestral domain.[211]

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[211] This is the clear implication of the clause "except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations" in the definition of "ancestral domain," in the IPRA Law *viz*:

SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

Fourth, that the project site was subsequently classified by the SBMA as forming part of an industrial zone does not exempt it from the CNO requirement. The change in the classification of the land is not an exception to the CNO requirement under the IPRA Law. Otherwise, government agencies can easily defeat the rights of ICCs/IPs through the conversion of land use.

Fifth, SBMA argues that the CNO issued to HHIC should, for all intents and purposes, be applicable to RP Energy. However, as correctly ruled by the appellate court, the CNO issued to HHIC's shipyard cannot be extended to RP Energy's project site because they involve two different locations although found within the same land mass. The CNO issued in favor of HHIC clearly states that the findings in the CNO are applicable only to the shipyard location of HHIC.

Last, the steps taken by SBMA, in securing a CNO prior to its lease agreement with HHIC, was the proper and prudent course of action that should have been applied to the LDA with RP Energy. It does not matter that HHIC itself asked for the CNO prior to entering into a lease agreement with SBMA, as claimed by SBMA, while RP Energy did not make such a request because, as we have discussed, SBMA had the obligation, given the surrounding circumstances, to secure a CNO in order to

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a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present **except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/ corporations**, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators; x x x (Emphasis supplied)

rule out the possibility that the project site overlapped with an ancestral domain.

All in all, we find, applying the foregoing rule of action, that SBMA should have secured a CNO before entering into the LDA with RP Energy. Considering that Section 59 is a prohibitory statutory provision, a violation thereof would ordinarily result in the nullification of the contract.[212] However, we rule that the harsh consequences of such a ruling should not be applied to the case at bar.

The reason is that this is the first time that we lay down the foregoing rule of action so much so that it would be inequitable to retroactively apply its effects with respect to the LDA entered into between SBMA and RP Energy. We also note that, under the particular circumstances of this case, there is no showing that SBMA and RP Energy had a deliberate or ill intent to escape, defeat or circumvent the mandate of Section 59 of the IPRA Law. On the contrary, they appear to have believed in good faith, *albeit* erroneously, that a CNO was no longer needed because of the afore-discussed defenses they raised herein. When the matter of lack of a CNO relative to the LDA was brought to their attention, through the subject Petition for Writ of *Kalikasan* filed by the Casiño Group, RP Energy, with the endorsement of SBMA, promptly undertook to secure the CNO, which was issued on October 31, 2012 and stated that the project site does not overlap with any ancestral domain.[213]

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[212] Article 5 of the Civil Code provides:

ARTICLE 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

[213] The Certificate of Non-Overlap with Control No. RIII-CNO-12-10-0011 issued on 31 October 2012 stated:

"**THIS IS TO CERTIFY** that based on the findings of the FBI Team in its report dated October 8, 2012 and submitted by Ms. Candida P. Cabinta, Provincial Officer, the applied site/s for Certification Precondition situated at Subic Bay Freeport Zone (SBFZ) Sitio Naglatore, Brgy. Cawag, Subic, Zambales covering an aggregate area of Thirty Eight (38.00) hectares more or less, does not affect/overlap with any ancestral domain.

THIS CERTIFICATION is issued to SBMA-REDONDO PENINSULA ENERGY CORPORATION with office address at Unit 304 The Venue, Rizal

Thus, absent proof to the contrary, we are not prepared to rule that SBMA and RP Energy acted in bad faith or with inexcusable negligence, considering that the foregoing rule of action has not heretofore been laid down by this Court. As a result, we hold that the LDA should not be invalidated due to equitable considerations present here.

By so ruling, we clarify that we reject RP Energy's claim that the belated submission of the CNO is an "over compliance" on its part. Quite the contrary, as we have discussed, the CNO should have been first secured given the surrounding circumstances of this case.

In the same vein, we reject SBMA's argument that the belated application for, and submission of the CNO cured whatever defect the LDA had. We have purposely avoided a ruling to the effect that a CNO secured subsequent to the concession, lease, license, permit or production-sharing agreement will cure the defect. Such a ruling would lead to abuse of the CNO requirement since the defect can be cured anyway by a subsequent and belated application for a CNO. Government agencies and third parties, either through deliberate intent or negligence, may view it as an excuse not to timely and promptly secure the CNO, even when the circumstances warrant the application for a CNO under the afore-discussed rule of action, to the damage and prejudice of ICCs/IPs. Verily, once the concession, lease, license or permit is issued, or the agreement is entered into without the requisite CNO, consequent damages will have already occurred if it later turns out that the site overlaps with an ancestral domain. This is so even if the ICCs/IPs can have the project stopped upon discovery that it overlapped with their ancestral domain under the last *proviso*[214] of Section 59. To prevent this evil,

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Highway, Subic Bay Industrial Park, Phase I, Subic Bay Freeport Zone 2222 in connection with the application for 600 MW Circulating Fluidized Bed (CFB) Coal Fired Power Plant before the Ecology Center, Subic Bay Metropolitan Authority.

x x x x x x x x x (CA *rollo*, Volume XVI, p. 6495)

[214] SECTION 59. *Certification Precondition*. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing,

compliance with the CNO requirement should be followed through the afore-discussed rule of action.

In sum, we rule that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy. However, considering that this is the first time we lay down the rule of action appropriate to the application of Section 59, we refrain from invalidating the LDA due to equitable considerations.

VI.

Whether compliance with Section 27, in relation to Section 26, of the LGC (*i.e.*, approval of the concerned *sanggunian* requirement) is necessary prior to the implementation of the power plant project.

Sustaining the arguments of the Casiño Group, the appellate court ruled that the subject project cannot be constructed and operated until after the prior approval of the concerned *sanggunian* requirement, under Section 27 of the LGC, is complied with. Hence, the ECC and LDA could not be validly granted and entered into without first complying with the aforesaid provision. It held that all the requisites for the application of the aforesaid provision are present. As to the pertinent provisions of RA 7227 or "The Bases Conversion and Development Act of 1992," which grants broad powers of administration to the SBMA over the Subic Special Economic Zone (SSEZ), the appellate court ruled that RA 7227 contains a provision recognizing the basic autonomy of the LGUs which joined the SSEZ. Thus, the LGC and RA 7227 should be harmonized whereby the

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renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: **Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.** (Emphasis supplied)

concerned *sanggunian's* power to approve under Section 27 must be respected.

The DENR impliedly agrees with the Casiño Group that compliance with Section 27 is still required but without clearly elaborating its reasons therefor.

The SBMA and RP Energy, however, argue that the prior approval of the concerned *sanggunian* requirement, under Section 27, is inapplicable to the subject project because it is located within the SSEZ. The LGC and RA 7227 cannot be harmonized because of the clear mandate of the SBMA to govern and administer all investments and businesses within the SSEZ. Hence, RA 7227 should be deemed as carving out an exception to the prior approval of the concerned *sanggunian* requirement insofar as the SSEZ is concerned.

We agree with the SBMA and RP Energy.

Preliminarily, we note that Sections 26 and 27 of the LGC contemplate two requirements: (1) prior consultations and (2) prior approval of the concerned *sanggunian*,*viz*:

SECTION 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance*. — It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. (Emphasis supplied)

SECTION 27. *Prior Consultations Required*. — **No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained**: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless

appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. (Emphasis supplied)

In the case at bar, the Casiño Group only questions the alleged lack of the prior approval of the concerned *sanggunians* under Section 27 of the LGC. Thus, we shall limit our discussion to the resolution of this issue. (Parenthetically, we note that prior consultations, as required by Section 26 of the LGC, appear to have been complied with. This may be gleaned from the EIS of RP Energy which contains the documentation of the extensive public consultations held, under the supervision of the DENR-EMB, relative to the subject project, as required by the EIA process,[215] as well as the social acceptability policy consultations conducted by the SBMA, which generated the document entitled "Final Report: Social Acceptability Process for RP Energy, Inc.'s 600-MW Coal Plant Project," as noted and discussed in an earlier subsection.[216])

We also note that the Casiño Group argues that the approval of the concerned *sanggunian* requirement was necessary prior to the issuance of the ECC and the consummation of the LDA; the absence of which invalidated the ECC and LDA.

We shall no longer discuss at length whether the approval of the concerned *sanggunian* requirement must be complied with prior to the issuance of an ECC. As discussed in an earlier

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[215] The DENR, in assessing ECC applications, requires project proponents to conduct public participation/consultation. Section 5.3, Article II of DAO 2003-30 on public hearing/consultation requirements provides, in part:

Proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan. All public consultations and public hearings conducted during the EIA process are to be documented. x x x

[216] In any event, there appears to be no good reason why the subject project should not comply with the prior consultations requirement under Section 26, in relation to Section 27, of the LGC. There would be no conflict with RA 7227 because prior consultations do not impair the power of the SBMA to approve or disapprove a project within the SSEZ, *i.e.* the results of the public consultations do not bind or compel the SBMA to either approve or disapprove the project or program. *See* discussion, *infra*.

subsection, the issuance of an ECC does not, by itself, result in the implementation of the project. Hence, the purpose or goal of Sections 26 and 27 of the LGC, like Section 59 of the IPRA Law, does not yet obtain and, thus, the ECC may be issued even without prior compliance with Sections 26 and 27 of the LGC.

We, thus, limit the discussion as to whether the approval of the concerned *sanggunian* requirement should have been complied with prior to the consummation of the LDA, considering that the LDA is part of the implementation of the subject project and already vests in RP Energy the right to the use and enjoyment of the project site, as in fact horizontal clearing activities were already undertaken by RP Energy at the project site by virtue of the LDA.

The prior approval of the concerned *sanggunian* requirement is an attribute and implementation of the local autonomy granted to, and enjoyed by LGUs under the Constitution.[217] The LGU has the duty to protect its constituents and interests in the implementation of the project. Hence, the approval of the concerned *sanggunian* is required by law to ensure that local communities partake in the fruits of their own backyard.[218]

For Section 27, in relation to Section 26, to apply, the following requisites must concur: (1) the planning and implementation of the project or program is vested in a national agency or government-owned and-controlled corporation, *i.e.*, national programs and/or projects which are to be implemented in a particular local community; and (2) the project or program may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, extinction of animal or plant species, or call for the eviction of a particular group of people residing in the locality where the project will be implemented.[219]

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[217] Article X, Section 2 of the Constitution provides:

The territorial and political subdivisions shall enjoy local autonomy.

[218] *Alvarez v. Picop*, 538 Phil. 348, 402-403 (2006).

[219] *Lina, Jr. v. Paño*, 416 Phil. 438, 449-450 (2001).

In the case at bar, the two requisites are evidently present: (1) the planning and implementation of the subject project involves the Department of Energy, DENR, and SBMA; and (2) the subject project may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, or call for the eviction of a particular group of people residing in the locality where the project will be implemented. Hence, Section 27 of the LGC should ordinarily apply.

It is not disputed that no approval was sought from the concerned *sanggunians* relative to the subject project. What is more, the affected LGUs have expressed their strong oppositions to the project through various *sanggunian* resolutions.[220] However, it is also undisputed that the subject project is located within the SSEZ and, thus, under the territorial jurisdiction of the SBMA pursuant to RA 7227.

Thus, we are tasked to determine the applicability of the prior approval of the concerned *sanggunian* requirement, under Section 27 of the LGC, relative to a project within the territorial jurisdiction of the SBMA under RA 7227.

RA 7227 was passed on March 13, 1992 in the aftermath of the Mount Pinatubo eruption and the closure of the Subic Naval Base of the U.S. Armed Forces. It sought to revive the affected areas by creating and developing the SSEZ into a "self-sustaining industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments."[221] The SSEZ covered the City of Olangapo and Municipality of Subic in the Province of Zambales and the lands and its contiguous extensions occupied by the former U.S. Naval Base, which traversed the territories of the Municipalities of Hermosa and Morong in the Province of Bataan. Under Section 12 of RA 7227, the creation of the SSEZ was made subject to the concurrence by resolution

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[220] *Supra* notes 15, 26, and 27.

[221] RA 7227, Section 12(a).

of the respective *sanggunians* of the City of Olongapo and the Municipalities of Subic, Morong and Hermosa, *viz*:

> SECTION 12. Subic Special Economic Zone. — Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the Zone as provided herein.

Subsequently, the aforesaid *sanggunians* submitted their respective resolutions of concurrence and the President issued Presidential Proclamation No. 532, Series of 1995, defining the metes and bounds of the SSEZ.

In *Executive Secretary v. Southwing Heavy Industries, Inc.*,[222] we described the concept of SSEZ as a Freeport:

> The Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. The concept of this zone was explained by Senator Guingona in this wise:
>
> > Senator Guingona. Mr. President, the special economic zone is successful in many places, particularly Hong Kong, which is a free port. The difference between a special economic zone and an industrial estate is simply expansive in the sense that

[222] 518 Phil. 103 (2006).

the commercial activities, including the establishment of banks, services, financial institutions, agro-industrial activities, maybe agriculture to a certain extent.

This delineates the activities that would have the least of government intervention, and the running of the affairs of the special economic zone would be run principally by the investors themselves, similar to a housing subdivision, where the subdivision owners elect their representatives to run the affairs of the subdivision, to set the policies, to set the guidelines.

We would like to see Subic area converted into a little Hong Kong, Mr. President, where there is a hub of free port and free entry, free duties and activities to a maximum spur generation of investment and jobs.

While the investor is reluctant to come in the Philippines, as a rule, because of red tape and perceived delays, we envision this special economic zone to be an area where there will be minimum government interference.

The initial outlay may not only come from the Government or the Authority as envisioned here, but from them themselves, because they would be encouraged to invest not only for the land but also for the buildings and factories. As long as they are convinced that in such an area they can do business and reap reasonable profits, then many from other parts, both local and foreign, would invest, Mr. President.[223] (Emphasis in the original)

To achieve the above-mentioned purposes, the law created SBMA to administer the SSEZ. In the process, SBMA was granted broad and enormous powers as provided for under Section 13(b) of RA 7227:

Sec. 13. *The Subic Bay Metropolitan Authority.* –

x x x x x x x x x

(b) *Powers and functions of the Subic Bay Metropolitan Authority* - The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:

[223] *Id.* at124-125.

(1) To operate, administer, manage and develop the ship repair and ship building facility, container port, oil storage and refueling facility and Cubi Air Base within the Subic Special Economic and Free-port Zone as a free market in accordance with the policies set forth in Section 12 of this Act;

(2) **To accept any local or foreign investment, business or enterprise**, subject only to such rules and regulations to be promulgated by the Subic Authority in conformity with the policies of the Conversion Authority without prejudice to the nationalization requirements provided for in the Constitution;

(3) **To undertake and regulate the establishment, operation and maintenance of utilities, other services and infrastructure in the Subic Special Economic Zone** including shipping and related business, stevedoring and port terminal services or concessions, incidental thereto and airport operations in coordination with the Civil Aeronautics Board, and to fix just and reasonable rates, fares charges and other prices therefor;

(4) **To construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license permits bulk purchase from the private sector and build-operate transfer scheme or joint-venture the required utilities and infrastructure** in coordination with local government units and appropriate government agencies concerned and in conformity with existing applicable laws therefor;

(5) To adopt, alter and use a corporate seal; to contract, lease, sell, dispose, acquire and own properties; to sue and be sued in order to carry out its duties and functions as provided for in this Act and to exercise the power of eminent domain for public use and public purpose;

(6) Within the limitation provided by law, to raise and/or borrow the necessary funds from local and international financial institutions and to issue bonds, promissory notes and other securities for that purpose and to secure the same by guarantee, pledge, mortgage deed of trust, or assignment of its properties held by the Subic Authority for the purpose of financing its projects and programs within the framework and limitation of this Act;

(7) To operate directly or indirectly or license tourism related activities subject to priorities and standards set by the Subic

Authority including games and amusements, except horse racing, dog racing and casino gambling which shall continue to be licensed by the Philippine Amusement and Gaming Corporation (PAGCOR) upon recommendation of the Conversion Authority; to maintain and preserve the forested areas as a national park;

(8) To authorize the establishment of appropriate educational and medical institutions;

(9) To protect, maintain and develop the virgin forests within the baselands, which will be proclaimed as a national park and subject to a permanent total log ban, and for this purpose, the rules and regulations of the Department of Environment and Natural Resources and other government agencies directly involved in the above functions shall be implemented by the Subic Authority;

(10) To adopt and implement measures and standards for environmental pollution control of all areas within its territory, including but not limited to all bodies of water and to enforce the same. For which purpose the Subic Authority shall create an Ecology Center; and

(11) To exercise such powers as may be essential, necessary or incidental to the powers granted to it hereunder as well as to carry out the policies and objectives of this Act. (Emphasis supplied)

The Implementing Rules of RA 7227 further provide:

Sec. 11. *Responsibilities of the SBMA*. Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have the following responsibilities:

(a) The SBMA shall exercise authority and jurisdiction over all economic activity within the SBF[224]

x x x x x x x x x

(f) Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and these Rules in the SBF:

x x x x x x x x x

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[224] Subic Bay Freeport; also referred to as the SSEZ.

(8) to issue, alter, modify, suspend or revoke for cause, any permit, certificate, license, visa or privilege allowed under the Act or these Rules;

x x x x x x x x x

(11) to promulgate such other rules, regulations and circulars as may be necessary, proper or incidental to carry out the policies and objectives of the Act, these Rules, as well as the powers and duties of the SBMA thereunder.[225]

As can be seen, the SBMA was given broad administrative powers over the SSEZ and these necessarily include the power to approve or disapprove the subject project, which is within its territorial jurisdiction. But, as previously discussed, the LGC grants the concerned *sanggunians* the power to approve and disapprove this same project. The SBMA asserts that its approval of the project prevails over the apparent disapproval of the concerned *sanggunians*. There is, therefore, a real clash between the powers granted under these two laws.

Which shall prevail?

Section 12 of RA 7227 provides:

Sec. 12. *Subic Special Economic Zone*. x x x

The abovementioned zone shall be **subjected to the following policies**:

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

x x x x x x x x x

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[225] Section 11 of the "Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority Under Republic Act No. 7227, Otherwise Known as the 'Bases Conversion and Development Act of 1992."

(i) **Except as herein provided**, the local government units comprising the Subic Special Economic Zone **shall retain their basic autonomy and identity**. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991. (Emphasis supplied)

This section sets out the basic policies underlying the creation of the SSEZ. Indeed, as noted by the appellate court, Section 12(i) expressly recognizes the basic autonomy and identity of the LGUs comprising the SSEZ. However, the clause "[e]xcept as herein provided" unambiguously provides that the LGUs do not retain their basic autonomy and identity when it comes to matters specified by the law as falling under the powers, functions and prerogatives of the SBMA.

In the case at bar, we find that the power to approve or disapprove projects within the SSEZ is one such power over which the SBMA's authority prevails over the LGU's autonomy. Hence, there is no need for the SBMA to secure the approval of the concerned *sanggunians* prior to the implementation of the subject project.

This interpretation is based on the broad grant of powers to the SBMA over all administrative matters relating to the SSEZ under Section 13 of RA 7227, as afore-discussed. Equally important, under Section 14, other than those involving defense and security, the SBMA's decision prevails in case of conflict between the SBMA and the LGUs in all matters concerning the SSEZ, *viz.*:

Sec. 14. *Relationship with the Conversion Authority and the Local Government Units.*

(a) **The provisions of existing laws, rules and regulations to the contrary notwithstanding, the Subic Authority shall exercise administrative powers, rule-making and disbursement of funds over the Subic Special Economic Zone** in conformity with the oversight function of the Conversion Authority.

(b) In case of conflict between the Subic Authority and the local government units concerned on matters affecting the Subic Special

Economic Zone other than defense and security**, the decision of the Subic Authority shall prevail.** (Emphasis supplied)

Clearly, the subject project does not involve defense or security, but rather business and investment to further the development of the SSEZ. Such is in line with the objective of RA 7227 to develop the SSEZ into a self-sustaining industrial, commercial, financial and investment center. Hence, the decision of the SBMA would prevail over the apparent objections of the concerned *sanggunians* of the LGUs.

Significantly, the legislative deliberations on RA 7227, likewise, support and confirm the foregoing interpretation. As earlier noted, Section 13 b(4) of RA 7227 provides:

Sec. 13. *The Subic Bay Metropolitan Authority.* –

x x x x x x x x x

(b) *Powers and functions of the Subic Bay Metropolitan Authority* - The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:

x x x x x x x x x

(4) To construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license permits bulk purchase from the private sector and build-operate transfer scheme or joint-venture the required utilities and infrastructure in coordination with local government units and appropriate government agencies concerned and in conformity with existing applicable laws therefor;

In the Senate, during the period of amendments, when the provision which would eventually become the afore-quoted Section 13 b(4) of RA 7227 was under consideration, the following exchanges took place:

Senator Laurel. Mr. President.

The President. Senator Laurel is recognized.

Senator Laurel. Relative to line 27 up to line 31 of page 16, regarding the provision to the effect that the Authority will have the following functions: "to construct, acquire, own, etcetera," that is all right.

My motion is that we amend this particular line, starting from the word "structures," by deleting the words that follow on line 31, which states: "in coordination with local government units and", and substitute the following in place of those words: **"SUBJECT TO THE APPROVAL OF THE SANGGUNIAN OF THE AFFECTED LOCAL GOVERNMENT UNITS AND IN COORDINATION WITH."**

So, this paragraph will read, as follows: "to construct, own, lease, operate, and maintain on its own or through contract, franchise, license permits, bulk purchase from the private sector and build-operate-transfer scheme or joint venture the required utilities and infrastructure SUBJECT TO THE APPROVAL OF THE SANGGUNIAN OF THE AFFECTED LOCAL GOVERNMENT UNITS AND IN coordination with appropriate government agencies concerned and in conformity with existing applicable laws therefor."

The President. What does the Sponsor say?

Senator Shahani. **I believe this would cripple the Authority. I would like to remind our Colleagues that in the Board of Directors, the representatives of the local government units that agree to join with the Subic Special Economic Zone will be members of the Board so that they will have a say, Mr. President. But if we say "subject," that is a very strong word. It really means that they will be the ones to determine the policy.**

So, I am afraid that I cannot accept this amendment, Mr. President.

Senator Laurel. May I respond or react, Mr. President.

The President. Yes.

Senator Laurel. The Constitution is there, very categorical in the promotion and encouragement of local autonomy, and mandating Congress to enact the necessary Local Government Code with emphasis on local autonomy.

We have now Section 27 of the new Local Government Code which actually provides that for every project in any local government territory, the conformity or concurrence of the Sanggunian of every such local government unit shall be secured in the form of resolution—the consent of the Sanggunian.

The President. Well, both sides have already been heard. There is the Laurel amendment that would make the power of the Subic Bay Metropolitan Authority to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, permits, bulk purchases from private sector, build-operate-and-transfer scheme, or joint venture, the required utilities and infrastructure, subject to approval by the appropriate Sanggunian of the local government concerned.

This amendment to the amendment has been rejected by the Sponsor. So, we are voting now on this amendment.

As many as are in favor of the Laurel amendment, say Aye. (Few Senators: Aye.)

Those who are against the said amendment, say Nay. (Several Senators: Nay.)

Senator Laurel. Mr. President, may I ask for a nominal voting.

The President. A nominal voting should be upon the request of one-fifth of the Members of the House, but we can accommodate the Gentleman by asking for a division of the House.

Therefore, those in favor of the Laurel amendment, please raise their right hands. (Few Senators raised their right hands.)

Senator Laurel. I was asking, Mr. President, for a nominal voting.

The President. A nominal voting can be had only upon motion of one-fifth of the Members of the Body.

Senator Laurel. That is correct, Mr. President. But this is such an important issue being presented to us, because this question is related to the other important issue, which is: May an elected public official of a particular government unit, such as a town or municipality, participate as a member of the Board of Directors of this particular zone.

The President. The ruling of the Chair stands. The division of the House is hereby directed.

As many as are in favor of the Laurel amendment, please raised (sic) their right hands. (Few Senators raised their right hands.)

As many as are against the said amendment, please do likewise. (Several Senators raised their right hands.)

The amendment is lost.[226] (Emphasis supplied)

Indubitably, the legislature rejected the attempts to engraft Section 27's prior approval of the concerned *sanggunian* requirement under the LGC into RA 7227. Hence, the clear intent was to do away with the approval requirement of the concerned *sanggunians* relative to the power of the SBMA to approve or disapprove a project within the SSEZ.

The power to create the SSEZ is expressly recognized in Section 117 of the LGC, *viz.*:

TITLE VIII.
Autonomous Special Economic Zones

SECTION 117. *Establishment of Autonomous Special Economic Zones*. — The establishment by law of autonomous special economic zones in selected areas of the country shall be subject to concurrence by the local government units included therein.

When the concerned *sanggunians* opted to join the SSEZ, they were, thus, fully aware that this would lead to some diminution of their local autonomy in order to gain the benefits and privileges of being a part of the SSEZ.

Further, the point of Senator Shahani that the representation of the concerned LGUs in the Board of Directors will compensate for the diminution of their local autonomy and allow them to be represented in the decision-making of the SBMA is not lost on us. This is expressly provided for in Section 13(c) of RA 7227, *viz*:

SECTION 13. The Subic Bay Metropolitan Authority. —

x x x x x x x x x

(c) Board of Directors. — The powers of the Subic Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of fifteen (15) members, to wit:

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[226] III RECORDS, SENATE 8TH CONGRESS, 59TH SESSION, 613 (January 29, 1992).

(1) Representatives of the local government units that concur to join the Subic Special Economic Zone;

(2) Two (2) representatives from the National Government;

(3) Five (5) representatives from the private sector coming from the present naval stations, public works center, ship repair facility, naval supply depot and naval air station; and

(4) The remaining balance to complete the Board shall be composed of representatives from the business and investment sectors. (Emphasis supplied)

SBMA's undisputed claim is that, during the board meeting when the subject project was approved, except for one, all the representatives of the concerned LGUs were present and voted to approve the subject project.[227] Verily, the wisdom of the law creating the SSEZ; the wisdom of the choice of the concerned LGUs to join the SSEZ; and the wisdom of the mechanism of representation of the concerned LGUs in the decision-making process of the SBMA are matters outside the scope of the power of judicial review. We can only interpret and apply the law as we find it.

In sum, we find that the implementation of the project is not subject to the prior approval of the concerned *sanggunians*, under Section 27 of the LGC, and the SBMA's decision to approve the project prevails over the apparent objections of the concerned *sanggunians* of the LGUs, by virtue of the clear provisions of RA 7227. Thus, there was no infirmity when the LDA was entered into between SBMA and RP Energy despite the lack of approval of the concerned *sanggunians*.

VII.

Whether the validity of the third amendment to the ECC can be resolved by the Court.

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[227] CA *rollo*, Volume XVII, p. 6893. (Motion for Reconsideration of SBMA)

The Casiño Group argues that the validity of the third amendment should have been resolved by the appellate court because it is covered by the broad issues set during the preliminary conference.

RP Energy counters that this issue cannot be resolved because it was expressly excluded during the preliminary conference.

The appellate court sustained the position of RP Energy and ruled that this issue was not included in the preliminary conference so that it cannot be resolved without violating the right to due process of RP Energy.

We agree with the appellate court.

Indeed, the issue of the validity of the third amendment to the ECC was not part of the issues set during the preliminary conference, as it appears at that time that the application for the third amendment was still ongoing. The following clarificatory questions during the aforesaid conference confirm this, *viz.*:

J. LEAGOGO:
So what are you questioning in your Petition?

ATTY. RIDON:
We are questioning the validity of the amendment, Your Honor.

J. LEAGOGO:
Which amendment?

ATTY. RIDON:
From 2 x 150 to 1 x 300, Your Honor.

J. LEAGOGO:
Your Petition does not involve the 2 x 300 which is still pending with the DENR. Because you still have remedies there, you can make your noise there, you can question it to your heart[']s content because it is still pending.

x x x x x x x x x

J. LEAGOGO:
Atty. Ridon, I go back to my question. We're not yet talking of the legal points here. I'm just talking of what are you questioning. You are questioning the 1 x 300?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Because it was 2 x 150 and then 1 x 300?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Up to that point?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Because there is no amended ECC yet for the 2 x 300 or 600. That's clear enough for all of us.

ATTY. RIDON:
Yes, Your Honor.[228]

Given the invocation of the right to due process by RP Energy, we must sustain the appellate court's finding that the issue as to the validity of the third amendment cannot be adjudicated in this case.

Refutation of the Partial Dissent.

Justice Leonen partially dissents from the foregoing disposition on the following grounds:

(a) Environmental cases, such as a petition for a writ of *kalikasan*, should not, in general, be litigated *via* a representative, citizen or class suit because of the danger of misrepresenting the interests— and thus, barring future action due to *res judicata*— of those not actually present in the prosecution of the case, either because they do not yet exist, like the unborn generations, or because the parties bringing suit do not accurately represent the interests of the group they represent or the class to which they belong. As an exception, such representative, citizen or class suit may be allowed subject to certain conditions; and

[228] TSN, October 29, 2012, pp. 47, 50-51.

(b) The amendments to the ECC, granted by the DENR in favor of RP Energy, are void for failure to submit a new EIS in support of the applications for these amendments to the subject ECC, and a petition for writ of *kalikasan* is not the proper remedy to raise a defect in the ECC.

We disagree.

A.

Justice Leonen's proposition that environmental cases should not, in general, be litigated *via* a representative, citizen or class suit is both novel and ground-breaking. However, it is inappropriate to resolve such an important issue in this case, in view of the requisites for the exercise of our power of judicial review, because the matter was not raised by the parties so that the issue was not squarely tackled and fully ventilated. The proposition will entail, as Justice Leonen explains, an abandonment or, at least, a modification of our ruling in the landmark case of *Oposa v. Factoran*.[229] It will also require an amendment or a modification of Section 5 (on citizen suits), Rule 2 of the Rules of Procedure for Environmental Cases. Hence, it is more appropriate to await a case where such issues and arguments are properly raised by the parties for the consideration of the Court.

B.

Justice Leonen reasons that the amendments to the subject ECC are void because the applications therefor were unsupported by an EIS, as required by PD 1151 and PD 1586. The claim is made that an EIS is required by law, even if the amendment to the ECC is minor, because an EIS is necessary to determine the environmental impact of the proposed modifications to the original project design. The DENR rules, therefore, which permit the modification of the original project design without the requisite EIS, are void for violating PD 1151 and PD 1586.

We disagree.

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[229] G.R. No. 101083, July 30, 1993, 224 SCRA 792 (1993).

Indeed, Section 4 of PD 1151 sets out the basic policy of requiring an EIS in every action, project or undertaking that significantly affects the quality of the environment, *viz*:

SECTION 4. Environmental Impact Statements. — Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or -controlled corporations, as well as private corporations, firms and entities shall prepare, file and include in every action, project or undertaking **which significantly affects the quality of the environment** a detailed statement on —

(a) the environmental impact of the proposed action, project or undertaking;

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same. (Emphasis supplied)

As earlier stated, the EIS was subsequently developed and strengthened through PD 1586 which established the Philippine Environmental Impact Statement System. Sections 4 and 5 of PD 1586 provide:

SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects*. The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally

critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.** For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamituous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

SECTION 5. *Environmentally Non-Critical Projects*. — All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The National Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary. (Emphasis supplied)

These laws were, in turn, implemented by DAO 2003-30 and the Revised Manual.

As correctly noted by Justice Leonen, Presidential Proclamation No. 2146 was subsequently issued which, among others, classified fossii-fueled power plants as environmentally critical projects.

In conformity with the above-quoted laws and their implementing issuances, the subject project, a coal power plant, was classified by the DENR as an environmentally critical project, new and single. Hence, RP Energy was required to submit an EIS in support of its application for an ECC. RP Energy thereafter complied with the EIS requirement and the DENR, after review, evaluation and compliance with the other steps provided in its rules, issued an ECC in favor of RP Energy. As can be seen, the EIS requirement was **duly complied with**.

Anent Justice Leonen's argument that the subsequent amendments to the ECC were void for failure to prepare and submit a new EIS relative to these amendments, it is important to note that PD 1586 does not state the procedure to be followed when there is an application for an amendment to a previously issued ECC. There is nothing in PD 1586 which expressly requires an EIS for an amendment to an ECC.

In footnote 174 of the *ponencia*, it is stated:

> Parenthetically, we must mention that the validity of the rules providing for amendments to the ECC was challenged by the Casiño Group on the ground that it is *ultra vires* before the appellate court. It argued that the laws governing the ECC do not expressly permit the amendment of an ECC. However, the appellate court correctly ruled that the validity of the rules cannot be collaterally attacked. Besides, the power of the DENR to issue rules on amendments of an ECC is sanctioned under the doctrine of necessary implication. Considering that the greater power to deny or grant an ECC is vested by law in the President or his authorized representative, the DENR, there is no obstacle to the exercise of the lesser or implied power to amend the ECC for justifiable reasons. This issue was no longer raised before this Court and, thus, we no longer tackle the same here.

Because PD 1586 did not expressly provide the procedure to be followed in case of an application for an amendment to a previously issued ECC, the DENR exercised its discretion, pursuant to its delegated authority to implement this law, in issuing DAO 2003-30 and the Revised Manual.

Justice Leonen's argument effectively challenges the validity of the provisions in DAO 2003-30 and the Revised Manual relative to amendments to an ECC for being contrary to PD 1151 and 1586.

We disagree.

First, to repeat, there is nothing in PD 1586 which expressly requires an EIS for an amendment to an ECC.

Second, as earlier noted, the proposition would constitute a collateral attack on the validity of DAO 2003-30 and the Revised

Manual, which is not allowed under the premises. The Casiño Group itself has abandoned this claim before this Court so that the issue is not properly before this Court for its resolution.

Third, assuming that a collateral attack on the validity of DAO 2003-30 and the Revised Manual can be allowed in this case, the rules on amendments appear to be reasonable, absent a showing of grave abuse of discretion or patent illegality.

Essentially, the rules take into consideration the nature of the amendment in determining the proper Environmental Impact Assessment (EIA) document type that the project proponent will submit in support of its application for an amendment to its previously issued ECC. A minor amendment will require a less detailed EIA document type, like a Project Description Report (PDR), while a major amendment will require a more detailed EIA document type, like an Environmental Performance Report and Management Plan (EPRMP) or even an EIS.[230]

The rules appear to be based on the premise that it would be unduly burdensome or impractical to require a project proponent

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[230] Note that in Item #8 of the "DECISION CHART FOR DETERMINATION OF REQUIREMENTS FOR PROJECT MODIFICATION," a new EIS **can** be required for the amendment covered therein:

8.	Conversion to new project type (*e.g.* bunker-fired plant to gas-fired)	Considered new application but with lesser data requirements since most facilities are established; environmental performance in the past will serve as baseline; However, for operating projects, there may be need to request for Relief from ECC Commitment prior to applying for new project type to ensure no balance of environmental accountabilities from the current project	**New ECC** /EIS

to submit a detailed EIA document type, like an EIS, for amendments that, upon preliminary evaluation by the DENR, will not cause significant environmental impact. In particular, as applied to the subject project, the DENR effectively determined that it is impractical to require RP Energy to, in a manner of speaking, start from scratch by submitting a new EIS in support of its application for the first amendment to its previously issued ECC, considering that the existing EIS may be supplemented by an EPRMP to adequately evaluate the environmental impact of the proposed modifications under the first amendment. The same reasoning may be applied to the PDR relative to the second amendment.

As previously discussed, the Casiño Group failed to prove that the EPRMP and PDR were inadequate to assess the environmental impact of the planned modifications under the first and second amendments, respectively. On the contrary, the EPRMP and PDR appeared to contain the details of the planned modifications and the corresponding adjustments to be made in the environmental management plan or mitigating measures in order to address the potential impacts of these planned modifications. Hence, absent sufficient proof, there is no basis to conclude that the procedure adopted by the DENR was done with grave abuse of discretion.

Justice Leonen's proposition would effectively impose a stringent requirement of an EIS for each and every proposed amendment to an ECC, no matter how minor the amendment may be. While this requirement would seem ideal, in order to ensure that the environmental impact of the proposed amendment is fully taken into consideration, the pertinent laws do not, however, expressly require that such a procedure be followed. As already discussed, the DENR appear to have reasonably issued DAO 2003-30 and the Revised Manual relative to the amendment process of an ECC, by balancing practicality vis-à-vis the need for sufficient information in determining the environmental impact of the proposed amendment to an ECC. In fine, the Court cannot invalidate the rules which appear to

be reasonable, absent a showing of grave abuse of discretion or patent illegality.

We next tackle Justice Leonen's argument that a petition for *certiorari,* and not a writ of *kalikasan,* is the proper remedy to question a defect in an ECC.

In general, the proper procedure to question a defect in an ECC is to follow the appeal process provided in DAO 2003-30 and the Revised Manual. After complying with the proper administrative appeal process, recourse may be made to the courts in accordance with the doctrine of exhaustion of administrative remedies. However, as earlier discussed, in exceptional cases, a writ of *kalikasan* may be availed of to challenge defects in the ECC **provided** that (1) the defects are causally linked or reasonably connected to an environmental damage of the nature and magnitude contemplated under the Rules on Writ of *Kalikasan*, and (2) the case does not violate, or falls under an exception to, the doctrine of exhaustion of administrative remedies and/or primary jurisdiction.

As previously discussed, in the case at bar, only the allegation with respect to the lack of an EIA relative to the first and second amendments to the subject ECC may be reasonably connected to such an environmental damage. Further, given the extreme urgency of resolving the issue due to the looming power crisis, this case may be considered as falling under an exception to the doctrine of exhaustion of administrative remedies. Thus, the aforesaid issue may be conceivably resolved in a writ of *kalikasan* case.

More importantly, we have expressly ruled that this case is an **exceptional case** due to the looming power crisis, so that the rules of procedure may be suspended in order to address issues which, ordinarily, the Court would not consider proper in a writ of *kalikasan* case. Hence, all issues, including those not proper in a writ of *kalikasan* case, were resolved here in order to forestall another round of protracted litigation relative to the implementation of the subject project.

Conclusion

We now summarize our findings:

1. The appellate court correctly ruled that the Casiño Group failed to substantiate its claims that the construction and operation of the power plant will cause environmental damage of the magnitude contemplated under the writ of *kalikasan*. On the other hand, RP Energy presented evidence to establish that the subject project will not cause grave environmental damage, through its Environmental Management Plan, which will ensure that the project will operate within the limits of existing environmental laws and standards;

2. The appellate court erred when it invalidated the ECC on the ground of lack of signature of Mr. Aboitiz in the ECC's Statement of Accountability relative to the copy of the ECC submitted by RP Energy to the appellate court. While the signature is necessary for the validity of the ECC, the particular circumstances of this case show that the DENR and RP Energy were not properly apprised of the issue of lack of signature in order for them to present controverting evidence and arguments on this point, as the issue only arose during the course of the proceedings upon clarificatory questions from the appellate court. Consequently, RP Energy cannot be faulted for submitting the certified true copy of the ECC only after it learned that the ECC had been invalidated on the ground of lack of signature in the January 30, 2013 Decision of the appellate court. The certified true copy of the ECC, bearing the signature of Mr. Aboitiz in the Statement of Accountability portion, was issued by the DENR-EMB, and remains uncontroverted. It showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. Because the signing was done after the official release of the ECC on December 22, 2008, we note that the DENR did not strictly follow its rules, which require that the signing of the Statement of Accountability should be done before the official release of the ECC. However, considering that the issue was not adequately argued nor was evidence presented before the appellate court on the circumstances at the time of signing, there is insufficient basis to conclude that the procedure adopted

by the DENR was tainted with bad faith or inexcusable negligence. We remind the DENR, however, to be more circumspect in following its rules. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*.

3. The appellate court erred when it ruled that the first and second amendments to the ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. It failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual for amendment to ECCs. Our own examination of the provisions on amendments to ECCs in DAO 2003-30 and the Revised Manual, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments;

4. The appellate court erred when it invalidated the ECC for failure to comply with Section 59 of the IPRA Law. The ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity to secure the CNO under Section 59 before an ECC may be issued, and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid;

5. The appellate court erred when it invalidated the LDA between SBMA and RP Energy for failure to comply with Section 59 of the IPRA Law. While we find that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy, considering that this is the first time we lay down the rule of action appropriate to the application of Section 59, we refrain from invalidating the LDA for reasons of equity;

6. The appellate court erred when it ruled that compliance with Section 27, in relation to Section 26, of the LGC (*i.e.*, approval of the concerned *sanggunian* requirement) is necessary prior to issuance of the subject ECC. The issuance of an ECC does not, by itself, result in the implementation of the project. Hence, there is no necessity to secure prior compliance with the approval of the concerned *sanggunian* requirement, and the issuance of the subject ECC without first complying with the aforesaid requirement does not render it invalid. The appellate court also erred when it ruled that compliance with the aforesaid requirement is necessary prior to the consummation of the LDA. By virtue of the clear provisions of RA 7227, the project is not subject to the aforesaid requirement and the SBMA's decision to approve the project prevails over the apparent objections of the concerned *sanggunians*. Thus, the LDA entered into between SBMA and RP Energy suffers from no infirmity despite the lack of approval of the concerned *sanggunians*; and

7. The appellate court correctly ruled that the issue as to the validity of the third amendment to the ECC cannot be resolved in this case because it was not one of the issues set during the preliminary conference, and would, thus, violate RP Energy's right to due process.

WHEREFORE, the Court resolves to:

1. **DENY** the Petition in G.R. No. 207282; and

2. **GRANT** the Petitions in G.R. Nos. 207257, 207366 and 207276:

2.1. The January 30, 2013 Decision and May 22, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 00015 are reversed and set aside;

2.2. The Petition for Writ of *Kalikasan*, docketed as CA-G.R. SP No. 00015, is denied for insufficiency of evidence;

2.3. The validity of the December 22, 2008 Environmental Compliance Certificate, as well as the July 8, 2010 first amendment and the May 26, 2011 second amendment

thereto, issued by the Department of Environment and Natural Resources in favor of Redondo Peninsula Energy, Inc., are upheld; and

2.4. The validity of the June 8, 2010 Lease and Development Agreement between Subic Bay Metropolitan Authority and Redondo Peninsula Energy, Inc. is upheld.

SO ORDERED.

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

Velasco, Jr., J., see concurring opinion.

Perlas-Bernabe, concurs with the *ponecia* in denying the petition for Writ of Kalikasan but adopted *J.* Leonen's view on the manner by which an ECC should be assailed.

Leonen, J., see concurring and dissenting opinion.

Brion, J., no part.

Jardeleza, J., on leave.

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the well-crafted *ponencia* of Justice Mariano C. Del Castillo. I will, however, further elucidate on the procedural issues raised by the indefatigable Justice Marvic M.V.F. Leonen.

Justice Leonen posits that a petition for a writ of *kalikasan* is not the proper remedy in the instant proceedings since what the petitioners in G.R. No. 207282 assail is the propriety of the issuance and subsequent amendment of the ECCs by DENR for a project that has yet to be implemented. He argues that the novel action is inapplicable even more so to projects whose ECCs are yet to be issued or can still be challenged through administrative review processes. He concludes that the extraordinary initiatory petition does not subsume and is not a substitute for "all remedies that can contribute to the protection

of communities and their environment." While the good Justice did not specifically mention what the other available remedies are, *certiorari* under Rule 65 easily comes to mind as one such remedy.

I beg to disagree. The special civil action for a writ of *kalikasan* under Rule 7 of the Rules of Procedure for Environmental Cases (RPEC for brevity) is, I submit, the best available and proper remedy for petitioners Casiño, et al.

As distinguished from other available remedies in the ordinary rules of court, the writ of *kalikasan* is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology. As a matter of fact, by explicit directive from the Court, the RPEC are SPECIAL RULES crafted precisely to govern environmental cases. On the other hand, the "remedies that can contribute to the protection of communities and their environment" alluded to in Justice Leonen's dissent clearly form part of the Rules of Court which by express provision of the special rules for environmental cases "shall apply in a suppletory manner" under Section 2 of Rule 22. Suppletory means "supplying deficiencies." It is apparent that there is no vacuum in the special rules on the legal remedy on unlawful acts or omission concerning environmental damage since precisely Rule 7 on the writ of *kalikasan* encompasses all conceivable situations of this nature.

As a potent and effective tool for environmental protection and preservation, Rule 7, Section l of A.M. No. 09-6-8-SC, or the RPEC, reads:

SEC. 1. Nature of the writ. – The writ [of *kalikasan*] is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual

or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Availment of the *kalikasan* writ would, therefore, be proper if the following requisites concur in a given case:

1. that there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation is due to an unlawful act or omission of a public official or employee, or private individual or entity;
3. the situation in the ground involves an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Perusing the four corners of the petition in G.R. No. 207282, it can readily be seen that all the requisites are satisfactorily met.

There is, apropos the first requisite, allegations of actual or threatened violation of the constitutional right to a balanced and healthful ecology, as follows:

Environmental Impact and Threatened Damage to the Environment and Public Health

Acid Rain

35. According to RP Energy's Environmental Impact Statement for its proposed 2 x 150 MW Coal-Fired Thermal Power Plant Project, acid rain may occur in the combustion of coal, to wit -

x x x x x x x x x

During the operation phase, combustion of coal will result in emissions of particulates SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area.

x x x x x x x x x

Asthma Attacks

36. The same EPRMP mentioned the incidence of asthma attacks as result of power plant operations, to wit –

x x x x x x x x x

The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations.

x x x x x x x x x

37. The respondent's witness, Junisse Mercado, the Project Director of GHD, RP Energy's project Consultant engaged to conduct the environmental impact assessments, cannot also make certain that despite the mitigation and the lower emissions of the Proposed Project, no incidence of asthma will occur within the project site.

38. RP Energy has not made a study of the existing level of asthma incidence in the affected area, despite knowledge of secondary data that the leading cause of morbidity in the area are acute respiratory diseases.

Air Impact

39. Air quality impact is (sic) exists not only in the vicinity of the Project Site but to surroundings (sic) areas, particularly contiguous local government units as well.

40. In the air dispersion modeling of the 2012 EPRMP for the expansion of the Coal Fired Power Plant, among those identified as a discrete receptor for the modeling is the Olongapo City Poblacion.

41. The results of the air dispersion modeling study show that upon upset conditions, there exists deviation from normal conditions in relation to the extent of emission and pollution, even in receptors as far as the Olongapo City Poblacion, which is an area and local government unit outside the Project Site.

42. The possibility of upset conditions during plant operations are also likewise not denied, in which increased SOx and NOx emissions may occur.[1] (citations omitted)

x x x x x x x x x

[1] *Rollo* (G.R. No. 207282), pp. 21-24.

57. The SBMA Social Acceptability Consultations also included the assessment of different experts in various fields as to the potential effects of the Project. x x x

58. Based on the SBMA Final Report on the above mentioned consultations, the three experts shared the view, to wit –

> x x x x x x x x x
>
> x x x the conditions were not present to merit the operation of a coal-fired power plant, and to pursue and carry out the project with confidence and assurance that the natural assets and ecosystems within the Freeport area would not be unduly compromised, or that irreversible damage would not occur and that the threats to the flora and fauna within the immediate community and its surroundings would be adequately addressed.
>
> The three experts were also of the same opinion that the proposed coal plant project would pose a wide range of negative impacts on the environment, the ecosystems and human population within the impact zone.
>
> x x x x x x x x x
>
> The specialists also discussed the potential effects of an operational coal-fired power plant to its environs and the community therein. Primary among these were the following:
>
> i. Formation of acid rain, which would adversely affect the trees and vegetation in the area which, in turn, would diminish forest cover. The acid rain would also apparently worsen the acidity of the soil in the Freeport.
>
> ii. Warming and acidification of the seawater of the bay, resulting in the bioaccumulation of contaminants and toxic materials which would eventually lead to the overall reduction of marine productivity.
>
> iii. Discharge of pollutants such as Nitrous Oxide, Sodium Oxide, Ozone and other heavy metals such as mercury and lead to the surrounding region, which would adversely affect the health of the populace in the vicinity.[2]

The second requisite, i.e., that the actual or threatened violation is due to the unlawful act or omission of a public official or

[2] *Id.* at 31-33.

employee or private individual or entity, is deducible from the ensuing allegations:

a. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of RP Energy's 1x300 MW coal-fired power plant **without satisfying the certification precondition requirement under Sec. 59 of Republic Act No. 8371 or the indigenous peoples rights act and its implementing rules and regulations;**

b. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of the power plant **without the prior approval of the Sanggunian concerned, pursuant to Secs. 26 and 27 of the Local Government Code**;

c. Sec. 8.3 of DENR Administrative Order 2003-30 allowing amendments of environmental compliance certificates is null and void for being enacted ultra vires;

d. **Prescinding from the nullity of Sec. 8.3 of DENR Administrative Order 2003-30,** all amendments to RP Energy's Environmental Compliance Certificate for the construction and operation of a 2 x 150 MW coal-fired power plant are null and void.[3]

Specifically, the unlawful acts or omissions are:

l. Failure to comply with the certification precondition requirement under Sections 9 and 59 of Republic Act No. 8371 or the *Indigenous Peoples Rights Act* and its implementing rules and regulations;

2. Non-compliance with the requisite approval of the *Sanggunian Pambayan* pursuant to Sections 26 and 27 of the Local Government Code; and

3. Violation of Section 8.3 of DENR Administrative Order 2003-30 on environmental compliance certificate.

All the alleged unlawful acts or omissions were averred to be committed by public and private respondents. The petition

[3] Petition, pp. 17-18.

impleads the DENR, the Subic Bay Metropolitan Authority and the project proponent.

Thus, the second requisite was satisfied.

The estimated range of the feared damage, as clearly set forth in the petition, covers the provinces of Bataan and Zambales, specifically the municipalities and city mentioned therein, and thus addressing the requisite territorial requirement.

The petition avers:

> 121. The matter is thus of extreme urgency that, unless immediately restrained, will inevitably cause damage to the environment, the inhabitants of the provinces of Zambales and Bataan, particularly the municipalities of Subic, Zambales, Hermosa and Morong, Bataan and the City of Olongapo, Zambales including the herein Petitioners who will all suffer grave injustice and irreparable injury, particularly in proceeding with construction and operation of the Coal-Fired Power Plant in the absence of compliance with the Local Government Code's consultation and approval requirements under Sec. 26 and 27, Sec. 59 of R.A. No. 8371's requiring an NCIP Certification prior to the issuance of permits or licenses by government agencies and violating the restrictions imposed in its original ECC.[4]

Having satisfied all the requirements under the special rules, then Rule 7 on the writ of *kalikasan* is beyond cavil applicable and presents itself as the best available remedy considering the facts of the case and the circumstances of the parties.

Petition for Issuance of Writ of Kalikasan vis-à-vis Special Civil Action for Certiorari

Anent Justice Leonen's argument that there are other "remedies that can contribute to the protection of communities and their environment" other than Rule 7 of RPEC, doubtless referring to a Rule 65 petition, allow me to state in disagreement that there are instances when the act or omission of a public official or employee complained of will ultimately result in the infringement

[4] Petition, p. 46.

of the basic right to a healthful and balanced ecology. And said unlawful act or omission would invariably constitute grave abuse of discretion which, ordinarily, could be addressed by the corrective hand of *certiorari* under Rule 65. In those cases, a petition for writ of *kalikasan* would still be the superior remedy as in the present controversy, crafted as it were precisely to address and meet head-on such situations. Put a bit differently, in proceedings involving enforcement or violation of environmental laws, where arbitrariness or caprice is ascribed to a public official, the sharper weapon to correct the wrong would be a suit for the issuance of the *kalikasan* writ.

Prior to the effectivity of the RPEC which, inter alia, introduced the writ of *kalikasan*, this Court entertained cases involving attacks on ECCs via a Rule 65 petition[5] which exacts the exhaustion of administrative remedies as condition sine *qua non* before redress from the courts may be had.

Following the ordinary rules eventually led to several procedural difficulties in the litigation of environmental cases, as experienced by practitioners, concerned government agencies, people's organizations, non-governmental organizations, corporations, and public-interest groups,[6] more particularly with respect to *locus standi*, fees and preconditions. These difficulties signalled the

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[5] Section 1. *Petition for certiorari*.When a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. See *Bangus Fry Fisherfolk, et al. v. Lanzanas*, G.R. No. 131442, July 10, 2003.

[6] *Annotation to the Rules of Procedure for Environmental Cases,* p. 98.

pressing need to make accessible a more simple and expeditious relief to parties seeking the protection not only of their right to life but also the protection of the country's remaining and rapidly deteriorating natural resources from further destruction. Hence, the RPEC. With its formulation, the Court sought to address procedural concerns peculiar to environmental cases,[7] taking into consideration the imperative of prompt relief or protection where the impending damage to the environment is of a grave and serious degree. Thus, the birth of the writ of *kalikasan*, an extraordinary remedy especially engineered to deal with environmental damages, or threats thereof, that transcend political and territorial boundaries.[8]

The advent of A.M. No. 09-6-8-SC to be sure brought about significant changes in the procedural rules that apply to environmental cases. The differences on eight (8) areas between a Rule 65 *certiorari* petition and Rule 7 *kalikasan* petition may be stated as follows:

1. **Subject matter**. Since its subject matter is any "unlawful act or omission," a Rule 7 *kalikasan* petition is broad enough to correct any act taken without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which is the subject matter of a Rule 65 certiorari petition. Any form of abuse of discretion as long as it constitutes an unlawful act or omission involving the environment can be subject of a Rule 7 *kalikasan* petition. A Rule 65 petition, on the other hand, requires the abuse of discretion to be "grave." Ergo, a subject matter which ordinarily cannot properly be subject of a certiorari petition can be the subject of a *kalikasan* petition.

2. **Who may file**. Rule 7 has liberalized the rule on *locus standi*, such that availment of the writ of *kalikasan* is open to a broad range of suitors, to include even an entity authorized by law, people's organization, or any public interest group accredited by or registered with any government agency, on

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[7] *Id*.

[8] *Id*. at 133.

behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated. Rule 65 allows only the aggrieved person to be the petitioner.

3. **Respondent**. The respondent in a Rule 65 petition is only the government or its officers, unlike in a *kalikasan* petition where the respondent may be a private individual or entity.

4. **Exemption from docket fees**. The *kalikasan* petition is exempt from docket fees, unlike in a Rule 65 petition. Rule 7 of RPEC has pared down the usually burdensome litigation expenses.

5. **Venue**. The *certiorari* petition can be filed with (a) the RTC exercising jurisdiction over the territory where the act was committed; (b) the Court of Appeals; and (c) the Supreme Court. Given the magnitude of the damage, the *kalikasan* petition can be filed directly with the Court of Appeals or the Supreme Court. The direct filing of a *kalikasan* petition will prune case delay.

6. **Exhaustion of administrative remedies**. This doctrine generally applies to a certiorari petition, unlike in a *kalikasan* petition.

7. **Period to file**. An aggrieved party has 60 days from notice of judgment or denial of a motion for reconsideration to file a certiorari petition, while a *kalikasan* petition is not subject to such limiting time lines.

8. **Discovery measures**. In a *certiorari* petition, discovery measures are not available unlike in a *kalikasan* petition. Resort to these measures will abbreviate proceedings.

It is clear as day that a *kalikasan* petition provides more ample advantages to a suitor than a Rule 65 petition for *certiorari*.

Taking into consideration the provisions of Rule 65 of the Rules of Court vis-à-vis Rule 7 of the RPEC, it should be at once apparent that in petitions like the instant petition involving unlawful act or omission causing environmental damage of such a magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces, Rule 7 of the RPEC is the

applicable remedy. Thus, the vital, pivotal averment is the illegal act or omission involving environmental damage of such a dimension that will prejudice a huge number of inhabitants in at least 2 or more cities and provinces. Without such assertion, then the proper recourse would be a petition under Rule 65, assuming the presence of the essential requirements for a resort to *certiorari*. It is, therefore, possible that subject matter of a suit which ordinarily would fall under Rule 65 is subsumed by the Rule 7 on *kalikasan* as long as such qualifying averment of environmental damage is present. I can say without fear of contradiction that a petition for a writ of *kalikasan* is a special version of a Rule 65 petition, but restricted in scope but providing a more expeditious, simplified and inexpensive remedy to the parties.

The Court must not take a myopic view of the case, but must bear in mind that what is on the table is a case which seeks to avert the occurrence of a disaster which possibly could result in a massive environmental damage and widespread harm to the health of the residents of an area. This is not a simple case of grave abuse of discretion by a government official which does not pose an environmental threat with serious and far-reaching implications and could be adequately and timely resolved using ordinary rules of procedure. To reiterate, the Rules on petitions for writ of *kalikasan* were specifically crafted for the stated purpose of expediting proceedings where immediacy of action is called for owing to the gravity and irreparability of the threatened damage. And this is precisely what is being avoided in the instant case.

Additionally, it must be emphasized that the initial determination of whether a case properly falls under a writ of *kalikasan* petition differs from the question of whether the parties were able to substantiate their claim of a possible adverse effect of the activity to the environment. The former requires only a perfunctory review of the allegations in the petition, without passing on the evidence, while the latter calls for the evaluation and weighing of the parties' respective evidence. And it is in the latter instance that Casiño, et al. miserably fell short. By not presenting even

a single expert witness, they were unable to discharge their duty of proving to the Court that the completion and operation of the power plant would bring about the alleged adverse effects to the health of the residents of Bataan and Zambales and would cause serious pollution and environmental degradation thereof. Hence, the denial of their petition.

***Oposa* ruling should not be abandoned**

The dissent proposes the abandonment of the doctrinal pronouncement in *Oposa*[9] bearing on the filing of suits in representation of others and of generations yet unborn, now embodied in Sec. 5 of the Environmental Rules. In the alternative, it is proposed that allowing citizen suits under the same Section 5 of the Environmental Rules be limited only to the following situations: (1) there is a clear legal basis for the representative suit; (2) there are actual concerns based squarely upon an existing legal right; (3) there is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and (4) there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary.

I strongly disagree with the proposal.

For one, *Oposa* carries on the tradition to further liberalize the requirement on *locus standi.* For another, the dissent appears to gloss over the fact that there are instances when statutes have yet to regulate an activity or the use and introduction of a novel technology in our jurisdiction and environs, and to provide protection against a violation of the people's right to life. Hence, requiring the existence of an "existing and clear legal right or basis" may only prove to be an imposition of a strict, if impossible, condition upon the parties invoking the protection of their right to life.

And for a third, to require that there should be no possibility of any countervailing interests existing within the population

[9] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

represented or those that are yet to be born would likewise effectively remove the rule on citizens suits from our Environmental Rules or render it superfluous. No party could possibly prove, and no court could calculate, whether there is a possibility that other countervailing interests exist in a given situation. We should not lose sight of the fact that the impact of an activity to the environment, to our flora and fauna, and to the health of each and every citizen will never become an absolute certainty such that it can be predicted or calculated without error, especially if we are talking about generations yet unborn where we would obviously not have a basis for said determination. Each organism, inclusive of the human of the species, reacts differently to a foreign body or a pollutant, thus, the need to address each environmental case on a case-to-case basis. Too, making sure that there are no countervailing interests in existence, especially those of populations yet unborn, would only cause delays in the resolution of an environmental case as this is a gargantuan, if not well-nigh impossible, task.

It is for the same reason that the rule on *res judicata* should not likewise be applied to environmental cases with the same degree of rigidity observed in ordinary civil cases, contrary to the dissent's contention. Suffice it to state that the highly dynamic, generally unpredictable, and unique nature of environmental cases precludes Us from applying the said principle in environmental cases.

Lastly, the dissent's proposition that a "citizen suit should only be allowed when there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary" is a pointless condition to be latched onto the RPEC. While the existence of an emergency provides a reasonable basis for allowing another person personally unaffected by an environmental accident to secure relief from the courts in representation of the victims thereof, it is my considered view that We need not limit the availability of a citizen's suit to such extreme situation.

The true and full extent of an environmental damage is difficult to fully comprehend, much so to predict. Considering the

dynamics of nature, where every aspect thereof is interlinked, directly or indirectly, it can be said that a negative impact on the environment, though at times may appear minuscule at one point, may cause a serious imbalance to our environs in the long run. And it is not always that this imbalance immediately surfaces. In some instances, it may take years before we realize that the deterioration is already serious and possibly irreparable, just as what happened to the Manila Bay where decades of neglect, if not sheer citizen and bureaucratic neglect, ultimately resulted in the severe pollution of the Bay.[10] To my mind, the imposition of the suggested conditions would virtually render the provisions on citizen's suit a pure jargon, a useless rule, in short.

Anent the substantive issues, I join the *ponencia* in its determination that Casiño, et al. failed to substantiate their claim of an imminent and grave injury to the environment should the power project proceed.

I vote to **DENY** the Petition in G.R. No. 207282, and to **GRANT** the Petitions in G.R. Nos. 207257, 207276 and 207366.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur that the petition for the Issuance of a Writ of Kalikasan should be dismissed.

A Writ of Kalikasan is an extraordinary and equitable writ that lies only to prevent an actual or imminent threat "of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."[1] It is not the proper remedy to stop a project that has not yet been built. It is not the proper remedy for proposed projects whose environmental compliance

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[10] See *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008.

[1] Rules of Procedure for Environmental Case, Rule 7, Sec. 1.

certificates (ECC) are yet to be issued or may still be questioned through the proper administrative and legal review processes. In other words, the petition for a Writ of Kalikasan does not subsume and is not a replacement for all remedies that can contribute to the protection of communities and their environment.

I dissent from the majority's ruling regarding the validity of the amended ECCs. Aside from this case being the wrong forum for such issues, Presidential Decree Nos. 1151[2] and 1586[3] instituting the Environmental Impact Statement System grants no power to the Department of Environment and Natural Resources to exempt environmentally critical projects from this requirement in the guise of amended project specifications. Besides, even assuming without granting that the Department of Environment and Natural Resources Administrative Order No. 2003-30[4] was validly issued, the changes in the project design were substantial. Its impact on the ecology would have been different from how the project was initially presented. The Court of Appeals committed grave abuse of discretion in considering this issue because the procedure for a Writ of Kalikasan is not designed to evaluate the propriety of the ECCs.

Compliance with Sections 26[5] and 27[6] of the Local Government Code and the provisions of the Indigenous Peoples' Rights Act

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[2] Pres. Decree No. 1151 (1979), Philippine Environmental Policy.

[3] Pres. Decree No. 1586 (1978), Establishing an Environmental Impact System, Including Other Environmental Management Related Measures and for Other Purposes.

[4] DENR Adm. Order No. 2003-30 (2003), Implementing Rules and Regulations of Presidential Decree No. 1586.

[5] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

Section 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned

(IPRA)[7] is not a matter that relates to environmental protection directly. The absence of compliance with these laws forms causes of action that cannot also be brought through a petition for the issuance of a Writ of Kalikasan.

This case highlights the dangers of abuse of the extraordinary remedy of the Writ of Kalikasan. Petitioners were not able to move forward with substantial evidence. Their attempt to present technical evidence and expert opinion was so woefully inadequate that they put at great risk the remedies of those who they purported to represent in this suit inclusive of generations yet unborn.

I

Furthermore, the original Petition for the issuance of a Writ of Kalikasan that was eventually remanded to the Court of Appeals was not brought by the proper parties.

Only real parties in interest may prosecute and defend actions.[8] The Rules of Court defines "real party in interest" as a person who would benefit or be injured by the court's judgment. Rule 3, Section 2 of the Rules of Court provides:

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and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

[6] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

Section 27. *Prior Consultations Required.* - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

[7] Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.

[8] RULES OF COURT, Rule 3, Sec. 2; See also *Stronghold Insurance Company Inc., v. Cuenca,* G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per *J.* Bersamin, First Division].

SEC. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The rule on real parties in interest is incorporated in the Rules of Procedure for Environmental Cases. Rule 2, Section 4 provides:

Section 4. *Who may file.* — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect.[9] He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced."[10] In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[11] The term "interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved."[12] The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.[13]

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[9] See *Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per *J.* Tinga, Second Division].

[10] See *Stronghold Insurance Company Inc., v. Cuenca,* G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per *J.* Bersamin, First Division].

[11] *Id*. See also *De Leon v. Court of Appeals,* 343 Phil. 254 (1997) [Per *J.* Davide, Jr., Third Division], *citing Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 900-902 (1996) [Per *J.* Regalado, *En Banc*].

[12] See *Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per *J.* Tinga, Second Division]; See also *Ang v. Ang,* G.R. No. 186993, August 22, 2012, 678 SCRA 699, 707 [Per *J.* Reyes, Second Division].

[13] *De Leon v. Court of Appeals,* 343 Phil. 254 (1997) [Per *J.* Davide, Jr., Third Division] *citing* 1 M. MORAN, *COMMENTARIES ON THE RULES OF COURT* 154 (1979).

A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another. Thus:

SEC. 3. ***Representatives as parties.*** – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."[14]

The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest. In citizen's suits filed under the Rules of Procedure for Environmental Cases, the real parties in interest are the minors and the generations yet unborn. Section 5 of the Rules of Procedure for Environmental Cases provides:

SEC. 5. Citizen suit. – Any Filipino citizen in representation of others, including minors or generations yet unborn may file an action to

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[14] Concurring Opinion of *J.* Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran*.[15] This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of country's natural resources.[16]

To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

> *First,* they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second,* varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third,* automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.[17]

In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue

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[15] G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per *J.* Davide, Jr., *En Banc*].

[16] *Id.* at 802-803.

[17] Concurring Opinion of *J.* Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.

Thus, minors and future generations will be barred from litigating their interests in the future, however different it is from what was approximated for them by the persons who alleged to represent them. This may weaken our future generations' ability to decide and argue for themselves based on the circumstances and concerns that are actually present in their time.

Expanding the scope of who may be real parties in interest in environmental cases to include minors and generations yet unborn "opened a dangerous practice of binding parties who are yet incapable of making choices for themselves, either due to minority or the sheer fact that they do not yet exist."[18]

This court's ruling in *Oposa* should, therefore, be abandoned or at least should be limited to situations when:

(1) "There is a clear legal basis for the representative suit;

(2) There are actual concerns based squarely upon an existing legal right;

(3) There is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and

(4) There is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary."[19]

Representative suits are different from class suits. Rule 3, Section 12 of the Rules of Court provides:

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[18] *Id*.

[19] *Id*.

SEC. 12. ***Class suit.*** – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to protect his individual interest.

Thus, class suits may be filed when the following are present:

a) When the subject matter of the controversy is of common or general interest to many persons;

b) When such persons are so numerous that it is impracticable to join them all as parties; and

c) When such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.

A class suit is a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting a class suit are not suing merely as representatives. They themselves are real parties in interest directly injured by the acts or omissions complained of. There is a common cause of action in a class. The group collectively — not individually — enjoys the right sought to be enforced.

The same concern in representative suits regarding res judicata applies in class suits. The persons bringing the suit may not be truly representative of all the interests of the class they purport to represent, but any decision issued will bind all members of the class.

However, environmental damage or injury is experienced by each person differently in degree and in nature depending on the circumstances. Therefore, injuries suffered by the persons brought as party to the class suit may not actually be common to all. The representation of the persons instituting the class suit ostensibly on behalf of others becomes doubtful. Hence, courts should ensure that the persons bringing the class suit are

truly representative of the interests of the persons they purport to represent.

In addition, since environmental cases are technical in nature, persons who assert environment-related rights must be able to show that they are capable of bringing "reasonably cogent, rational, scientific, well-founded arguments" as a matter of fairness to those they say they represent. Their beneficiaries would expect that they would argue for their interests in the best possible way.[20]

The court should examine the cogency of a petitioner's or complainant's cause by looking at the allegations and arguments in the complaint or petition. Their allegations and arguments must show at the minimum the scientific cause and effect relationship between the act complained of and the environmental effects alleged. The threat to the environment must be clear and imminent and "of such magnitude"[21] such that inaction will certainly redound to ecological damage.

Casiño, et al. argued that they were entitled to the issuance of a Writ of Kalikasan because they alleged that environmental damage would affect the residents of Bataan and Zambales if the power plant were allowed to operate. They based their allegations on documents stating that coal combustion would produce acid rain and that exposure to coal power plant emissions would have adverse health effects.

However, Casiño, et al. did not present an expert witness whose statements and opinion can be relied on regarding matters relating to coal technology and other environmental matters. Instead, they presented a partylist representative, a member of an environmental organization, and a vice governor. These witnesses possess no technical qualifications that would render

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[20] Concurring Opinion of J. Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

[21] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec.1.

their conclusions sufficient as basis for the grant of an environmental relief.

The scientific nature of environmental cases requires that scientific conclusions be taken from experts or persons with "special knowledge, skill, experience or training."[22]

Expert opinions are presumed valid though such presumption is disputable. In the proper actions, courts may evaluate the expert's credibility. Credibility, when it comes to environmental cases, is not limited to good reputation within their scientific community. With the tools of science as their guide, courts should also examine the internal and external coherence of the hypothesis presented by the experts, recognize their assumptions, and examine whether the conclusions of cause and effect are based on reasonable inferences from scientifically sound experimentation. Refereed academic scientific publications may assist to evaluate claims made by expert witnesses. With the tools present within the scientific community, those whose positions based on hysteria or unsupported professional opinion will become obvious.

Casiño, et al.'s witnesses admit that they are not experts on the matter at hand. None of them conducted a study to support their statements of cause and effect. It appears that they did not even bother to educate themselves as to the intricacies of the science that would support their claim.

Casiño, et al. only presented documents and articles taken from the internet to support their allegations on the environmental effects of coal power plants. They also relied on a "final report" on Subic Bay Metropolitan Authority's social acceptability policy considerations. There were statements in the report purportedly coming from Dr. Rex Cruz, U.P. Chancellor, Los Baños, Dr. Visitacion Antonio, a toxicologist, and Andre Jon Uychianco, a marine biologist, stating that "conditions were not present to merit the operation of a coal-fired power plant." The report also stated that the "coal plant project would pose a wide range

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[22] RULES OF COURT, Rule 130, Sec. 49.

of negative impacts on the environment." Casiño, *et al*., however, did not present the authors of these documents so their authenticity can be verified and the context of these statements could be properly understood. There was no chance to cross-examine their experts because they could not be cross-examined. In other words, their case was filed with their allegations only being supported by hearsay evidence that did not have the proper context. Their evidence could not have any probative value.

In contrast, RP Energy presented expert witnesses answering detail by detail Casiño, *et al*.'s allegations. They categorically stated that the predicted temperature changes would have only minimal impact.[23] Their witnesses also testified on the results of the tests conducted to predict the emissions that would be produced by the power plant. They concluded that the emissions would be less than the upper limit set in the Clean Air Act.[24] They also testified that the gas emissions would not produce acid rain because they were dilute.[25]

There was no rebuttal from petitioners. The strength of their claim was limited only to assertions and allegations. They did not have the evidence to support their claims or to rebut the arguments of the project proponents.

This case quintessentially reveals the dangers of unrestricted standing to bring environmental cases as class suits. The lack of preparation and skill by petitioners endangered the parties they sought to represent and even foreclosed the remedies of generations yet unborn.

In my view, the standing of the parties filing a Petition for the Issuance of a Writ of Kalikasan may be granted when there is adequate showing that: (a) the suing party has a direct and substantial interest; (b) there is a cogent legal basis for the allegations and arguments; and (3) the person suing has sufficient knowledge

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[23] Decision, pages 29-30.

[24] *Id*. at 32-33.

[25] *Id*. at 38.

and is capable of presenting all the facts that are involved including the scientific basis.[26]

II

The issuance of the ECCs was irregular. Substantial amendments to applications for ECCs require a new environmental impact statement.

However, a Petition for the Issuance of a Writ of Kalikasan is not the proper remedy to raise this defect in courts. ECCs issued by the Department of Environment and Natural Resources may be the subject of a motion for reconsideration with the Office of the Secretary. The Office of the Secretary may inform himself or herself of the science necessary to evaluate the grant or denial of an ECC by commissioning scientific advisers or creating a technical panel of experts. The same can be done at the level of the Office of the President where the actions of the Office of the Secretary of the DENR may be questioned. It is only after this exhaustion of administrative remedies which embeds the possibility of recruiting technical advice that judicial review can be had of the legally cogent standards and processes that were used.

A Petition for a Writ of Kalikasan filed directly with this court raising issues relating to the Environmental Compliance Certificate or compliance with the Environmental Impact Assessment Process denies the parties the benefit of a fuller technical and scientific review of the premises and conditions imposed on a proposed project. If given due course, this remedy prematurely compels the court to exercise its power to review the standards used without exhausting all the administrative forums that will allow the parties to bring forward their best science. Rather than finding the cogent and reasonable balance to protect our ecologies, courts will only rely on our own best guess of

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[26] Concurring Opinion of *J.* Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510_leonen.pdf> [Per *J.* Villarama, Jr., En Banc].

cause and effect. We substitute our judgement for the science of environmental protection prematurely.

Besides, the extraordinary procedural remedy of a Writ of Kalikasan cannot supplant the substantive rights involved in the Environmental Impact Assessment Process.

Presidential Decree No. 1151 provides for our environmental policy to primarily create, develop, and maintain harmonious conditions under which persons and nature can exist.[27]

Pursuant to this policy, it was recognized that the general welfare may be promoted by achieving a balance between environmental protection, and production and development.[28] Exploitation of the environment may be permitted, but always with consideration of its degrading effects to the environment and the adverse conditions that it may cause to the safety of the present and future generations.[29] The Environmental Impact Assessment System compels those who would propose an environmentally critical project or conduct activities in an environmentally critical area to consider ecological impact as part of their decision-making processes. By law and regulation, it is not only the costs and profit margins that should matter.

Presidential Decree No. 1151 established a duty for government agencies and instrumentalities, and private entities to submit a detailed environmental impact statement for every proposed action, project, or undertaking affecting the quality of the environment. Section 4 of Presidential Decree No. 1151 provides:

Section 4. *Environmental Impact Statements.* Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations firms and entities shall prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detail statement on

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[27] Pres. Decree No. 1151 (1977), Sec. 1.

[28] Pres. Decree No. 1151 (1977), Sec. 2.

[29] Pres. Decree No. 1151 (1977), Sec. 2.

(a) the environmental impact of the proposed action, project or undertaking[;]

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involve[s] the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same.

Based on the required environmental impact statement under Presidential Decree No. 1151, Presidential Decree No. 1586 was promulgated establishing the Environmental Impact Statement System.[30]

Under this system, the President may proclaim certain projects as environmentally critical.[31] An environmentally critical project is a "project or program that has high potential for significant negative environmental impact."[32] Proposals for environmentally critical projects require an environmental impact statement.[33]

On December 14, 1981, the President of the Philippines issued Proclamation No. 2146 declaring fossil-fueled power plants as environmentally-critical projects. This placed fossil-fueled power plants among the projects that require an environmental impact statement prior to the issuance of an ECC.

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[30] Pres. Decree No. 1586 (1978), SEC. 2.

[31] Pres. Decree No. 1586 (1978), SEC. 4.

[32] DENR Adm. Order No. 2003-30 (2003), SEC. 3(f).

[33] Pres. Decree No. 1586 (1978), SEC. 5.

In this case, the Department of Environment and Natural Resources issued an Environmental Compliance Certificate to RP Energy after it had submitted an environmental impact statement for its proposed 2 x 150 MW coal-fired power plant.[34]

However, when RP Energy requested for amendments of its application to the Department of Environmental and Natural Resources at least twice, amended ECCs were issued without requiring the submission of new environmental impact statements.

RP Energy's first request for amendment was due to its decision to change the project design to include "a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line,"[35] RP Energy submitted only an Environmental Performance Report and Management Plan (EPRMP) to support its request.[36]

RP Energy's second request for amendment was due to its desire to construct a 1 x 300 MW coal-fired power plant instead of a 2 x 150 MW coal-fired power plant.[37] For this request, RP Energy submitted a Project Description Report (PDR).[38]

Later, RP Energy changed the proposal to 2 x 300 MW coal-fired power plant.[39] It submitted an EPRMP to support its proposal.[40]

Department of Environment and Natural Resources and RP Energy argued that the ECC was valid because it was issued in accordance with the DAO 2003-30 or the Implementing Rules and Regulations for the Philippine environmental impact statement

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[34] *Ponencia*, pp. 5-6.

[35] *Id*. at p. 6.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*. at 7.

system (IRR).[41] Department of Environment and Natural Resources also argued that since the environmental impact statement submitted by RP Energy was still valid, there was no need for the submission of a new environmental impact statement.[42] Further, a change in the configuration of the proposed coal-fired power plant from 2 x 150 MW to 1 x 150 MW was not substantial to warrant the submission of a new environmental impact statement.[43]

The Department of Environment and Natural Resources' and RP Energy's arguments are not tenable.

The issuance of an ECC without a corresponding environmental impact statement is not valid. Section 4 of Presidential Decree No. 1151 specifically requires the filing of environmental impact statements for every action that significantly affects environmental quality. Presidential Decree No. 1586, the law being implemented by the IRR, recognizes and is enacted based on this requirement.[44]

Presidential Decree Nos. 1151 and 1586 do not authorize the Department of Environment and Natural Resources to allow exemptions to this requirement in the guise of amended project specifications.

The only exception to the environmental impact statement requirement is when the project is not declared as environmentally critical, as provided later in Presidential Decree No. 1586, thus:

> **Section 5. *Environmentally Non-Critical Projects.* –** All other projects, undertakings and areas not declared by the Presidents as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary.

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[41] *Id*. at 14 and 16.

[42] *Id*. at 14.

[43] *Id*.

[44] DENR Adm. Order No. 2003-30 (2003), SEC. 2.

Since fossil-fuelled power plants are already declared as environmentally critical projects in Proclamation No. 2146,[45] an environmental impact statement is required. An EPMRP or a project description is not enough.

An EPMRP and a project description are different from an environmental impact statement. The IRR itself describes the differences between the features of each documentation, as well as each's appropriate uses. The most detailed among the three is the environmental impact statement, which is required under the law for all environmentally critical projects.

An environmental impact statement is a document of scientific opinion "that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment."[46] It is predictive to an acceptable degree of certainty. It is an assurance that the proponent has understood all of the environmental impacts and that the measures it proposed to mitigate are both effective and efficient.

Section 4 of Presidential Decree No. 1151 requires the following detailed information in the environmental impact statement:

Section 4. *Environmental Impact Statements*. . . .

(a) the environmental impact of the proposed action, project or undertaking[;]

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involve the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

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[45] Proc. No. 2146 (1981), Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established under Presidential Decree No. 1586.

[46] DENR Adm. Order No. 2003-30 (2003), SEC. 3(k).

The IRR was more specific as to what details should be included in the environmental impact statement:

5.2.1 Environmental Impact Statement (EIS).

The EIS should contain at least the following:

a. EIS Executive Summary;

b. Project Description;

c. Matrix of the scoping agreement identifying critical issues and concerns, as validated by EMB;

d. Baseline environmental conditions focusing on the sectors (and resources) most significantly affected by the proposed action;

e. Impact assessment focused on significant environmental impacts (in relation to project construction/commissioning, operation and decommissioning), taking into account cumulative impacts;

f. Environmental Risk Assessment if determined by EMB as necessary during scoping;

g. Environmental Management Program/Plan;

h. Supporting documents, including technical/socio-economic data used/generated; certificate of zoning viability and municipal land use plan; and proof of consultation with stakeholders;

i. Proposals for Environmental Monitoring and Guarantee Funds including justification of amount, when required;

j. Accountability statement of EIA consultants and the project proponent; and

k. Other clearances and documents that may be determined and agreed upon during scoping.

Not all the details required in an environmental impact statement can be found in an EPRMP. An EPRMP only requires:

5.2.5 Environmental Performance Report and Management Plan (EPRMP).

The EPRMP shall contain the following:

a. Project Description;

b. Baseline conditions for critical environmental parameters;

c. Documentation of the environmental performance based on the current/past environmental management measures implemented;

d. Detailed comparative description of the proposed project expansion and/or process modification with corresponding material and energy balances in the case of process industries; and

e. EMP based on an environmental management system framework and standard set by EMB.

An EPRMP is not a comprehensive study of environmental impacts, unlike an environmental impact statement. It is, in essence, a description of the project and documentation of environmental performance. Based on Section 5.2.5 of the IRR, it contains no identification of critical issues. There is also no assessment of the environmental impact and risks that the project may cause.

The ponencia finds that the EIS requirement was complied with. According to the ponencia, the law does not expressly state that applications for amendments of ECCs require an EIS. Therefore, the EIS submitted prior to the amendment of the project's features was sufficient compliance with the EIS requirement under our laws.

Presidential Decree Nos. 1151 and 1586 require an EIS for every project that will substantially affect our environment. These laws do not exempt amended projects from the EIS requirement. The ponencia's finding presumes that for purposes of compliance with this EIS requirement, the project as originally described was identical with the project after the amendment such that no new EIS was necessary to determine if the environmental

impact would be different after the amendment. This is a dangerous and premature conclusion.

Any finding that the original project and the modified project are the same or different from each other in terms of environmental impact is itself a conclusion that must have scientific basis. Thus, to determine the environmental impact of projects, a different EIS should be submitted to reflect substantial modifications.

Our law requires the EIS for a purpose. It ensures that business proponents are sufficiently committed to mitigate the full environmental impacts of their proposed projects. It also ensures that the proposed mitigating measures to be applied are appropriate for the operations of an environmentally critical project. Dispensing with the appropriate EIS encourages businesses to treat the EIS requirement as a mere formality that may be obtained and later conveniently amend without the need to conduct the appropriate studies. It discourages full responsibility and encourages businesses to resort to expedient measures to secure the proper environmental clearances.

The ponencia ruled that a holistic reading of the IRR shows that the environmental impact assessment process allows for flexibility in the determination of the appropriate documentary requirements. The ponencia cites Section 8.3 of the IRR which states that the processing requirements for ECC amendments are focused only on necessary information. Thus:

8.3 Amending an ECC

Requirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes.

8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.

8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.

8.3.3. For ECC's issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECC's issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECC's.

The ponencia also cites the Revised Procedural Manual for DAO 03-30's (Revised Manual) "Flowchart on Request for ECC Amendments" (flowchart) and the "Decision Chart for Determination of Requirements for Project Modification" (decision chart).[47]

The first step in the flowchart states that "[w]ithin three (3) years from ECC issuance (for projects not started) OR at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a LETTER-REQUEST for ECC amendments including data information, reports or documents to substantiate the requested revisions."

Meanwhile, the decision chart states that an EPRMP will be required for "[i]ncrease in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification."[48]

According to the ponencia, these portions of the flowchart and the decision chart show that the ECC amendment process also applies to non-operating projects, and that the Department of Environment and Natural Resources correctly required an EPRMP to support the first of RP Energy's requested amendment.

However, to interpret the rules in a manner that would give the Department of Environment and Natural Resources the discretion whether to require or not to require an environmental impact statement renders the rules void. As an administrative agency, the Department of Environment and Natural Resources'

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[47] *Ponencia*, 66-67.

[48] *Ponencia,* p. 70.

power to promulgate rules is limited by the provisions of the law it implements. It has no power to modify the law, or reduce or expand its provisions. The provisions of the law prevail if there is inconsistency between the law and the rules promulgated by the administrative agency.

In *United BF Homeowner's Association v. BF Homes, Inc.*:[49]

> As early as 1970, in the case of Teoxon vs. Members of the Board of Administrators (PVA), we ruled that the power to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. Its terms must be followed for an administrative agency cannot amend an Act of Congress. "The rule-making power must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute." If a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails.
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> . . . .
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> The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat the purpose of a statute.
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> Moreover, where the legislature has delegated to an executive or administrative officers and boards authority to promulgate rules to carry out an express legislative purpose, the rules of administrative officers and boards, which have the effect of extending, or which conflict with the authority-granting statute, do not represent a valid exercise of the rule-making power but constitute an attempt by an administrative body to legislate. "A statutory grant of powers should not be extended by implication beyond what may be necessary for their just and reasonable execution." It is axiomatic that a rule or

[49] 369 Phil. 568 (1999) [Per *J.* Pardo, First Division].

regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[50]

In this case, the IRR implements Presidential Decree No. 1586 which in turn is based on Presidential Decree No. 1151. In Presidential Decree No. 1151, an environmental impact statement is required for all projects that have a significant impact on the environment. The IRR cannot provide for exemptions from the requirement of environmental impact statement for all environment-related actions or projects more than those covered by the exception provided in Presidential Decree No. 1586.

Thus, a project description also does not supplant the requirement of an environmental impact statement. RP Energy only submitted a project description to support its request for second amendment of the ECC to change the design of the coal plant from 2 x 150 MW to 1 x 300 MW.

A project description is described in the IRR as follows:

x. Project Description (PD) - document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects.

It shall contain the following information:

5.2.6. Project Description (PD)

The PD shall be guided by the definition of terms and shall contain the following:

a. Description of the project;

b. Location and area covered;

c. Capitalization and manpower requirement;

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[50] *Id*. at 579-580.

d. For process industries, a listing of raw materials to be used, description of the process or manufacturing technology, type and volume of products and discharges;

e. For Category C projects, a detailed description on how environmental efficiency and overall performance improvement will be attained, or how an existing environmental problem will be effectively solved or mitigated by the project;

f. A detailed location map of the impacted site showing relevant features (e.g. slope, topography, human settlements); [and]

g. Timelines for construction and commissioning

Based on the IRR, therefore, the project description also does not contain the features of an environmental impact statement. It is merely a descriptive of the project's nature and use of resources. It does not contain details of the project's environmental impact, critical issues, and risks.

We usually defer to the findings of fact and technical conclusions of administrative agencies because of their specialized knowledge in their fields. However, such findings and conclusions must always be based on substantial evidence, which is the "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[51] Because of the risks involved in environmental cases, the evidence requirement may be more than substantial. The court has more leeway to examine the evidence's substantiality.

Judicial review of administrative findings or decisions is justified if the conclusions are not supported by the required standard of evidence. It is also justified in the following instances as enumerated in *Atlas Consolidated Mining v. Factoran, Jr.*:[52]

. . . findings of fact in such decision should not be disturbed if supported by substantial evidence, but review is justified *when there has been a denial of due process, or mistake of law or fraud,*

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[51] *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635, 642-645 (1940) [Per *J.* Laurel, *En Banc*].

[52] 238 Phil. 48 (1987) [Per *J.* Paras, First Division].

collusion or arbitrary action in the administrative proceeding. . . where the procedure which led to factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.[53] (Emphasis supplied)

Thus, when there are procedural irregularities that lead to the conclusions or factual findings, the court may exercise their power of judicial review. In this case, the Department of Environment and Natural Resources issued an amended ECC based on an environmental impact assessment that does not correspond to the new design of the project.

An environmental impact statement is a comprehensive assessment of the possible environmental effects of a project. The study and its conclusions are based on project's components, features, and design. Design changes may alter conclusions. It may also have an effect on the cumulative impact of the project as a whole. Design changes may also have an effect on the results of an environmental impact assessment.

For these reasons, the amended ECCs issued without a corresponding environmental impact statement is void. A new ECC should be issued based on an environmental impact statement that covers the new design proposed by RP Energy.

However, a Writ of Kalikasan is not the proper remedy to question the irregularities in the issuance of an ECC. Casiño, et al. should have first exhausted administrative remedies in the Department of Environment and Natural Resources and the Office of the President before it could file a Petition for certiorari with our courts. Essentially, it could not have been an issue ripe for litigation in a remanded Petition for Issuance of a Writ of Kalikasan. Thus, the Court of Appeals committed grave abuse of discretion in acting on the nullification of the ECC. More so, it is improper for us to make any declaration on the validity of the amended ECCs in this action.

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[53] *Id*. at 57.

III

Local government consent under Sections 26 and 27 of the Local Government Code is not a requisite for the issuance of an ECC. The issuance of an ECC and the consent requirement under the Local Government Code involve different considerations.

The Department of Environment and Natural Resources issues an ECC in accordance with Presidential Decree Nos. 1151 and 1586. It is issued after a proposed project's projected environmental impact is sufficiently assessed and found to be in accordance with the applicable environmental standards. A Department of Environment and Natural Resources' valid finding that the project complies with environmental standards under the law may result in the issuance of the ECC. In other words, an ECC is issued solely for environmental considerations.

Although Section 26 of the Local Government Code requires "prior consultation" with local government units, organizations, and sectors, it does not state that such consultation is a requisite for the issuance of an ECC. Section 27 of the Local Government Code provides instead that consultation, together with the consent of the local government is a requisite for the **implementation** of the project. This shows that the issuance of the ECC is independent from the consultation and consent requirements under the Local Government Code. Sections 26 and 27 of the Local Government Code provide:

Section 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, **to consult** with the local government units, nongovernmental organizations, and other sectors concerned and **explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance,** and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27. *Prior Consultations Required.* – No project or program shall be implemented by government authorities unless **the consultations mentioned in Sections 2 (c) and 26 hereof are complied with**, and **prior approval of the sanggunian concerned is obtained**: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. (Emphases supplied)

Further, the results of the consultations under Sections 26 and 27 do not preclude the local government from taking into consideration concerns other than compliance with the environmental standards. Section 27 does not provide that the local government's prior approval must be based only on environmental concerns. It may be issued in light of its political role and based on its determination of what is economically beneficial for the local government unit.

The issuance of the ECC, therefore, does not guarantee that all other permits for a project will be granted. It does not bind the local government unit to give its consent for the project. Both are necessary prior to a project's implementation.

Similarly, the requirement of certificate of non-overlap under Section 59 of the Indigenous Peoples' Rights Act[54] is independent

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[54] Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating an National Commission on Indigenous Peoples, Establishing Mechanisms, Appropriating Funds Therefor, and for Other Purposes. Indigenous Peoples Rights Act.

Section 59 – Certification Precondition. All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall

from the issuance of an ECC. This requirement is a property issue. It is not related to environmental concerns under the Department of Environment and Natural Resources' jurisdiction.

IV

The question relating to the validity of the agreement between the SBMA and RP Energy is independent from the questions relating to whether the proper permits have been issued as well as whether the consent of the local government units have been properly secured.

The ponencia makes the claim that the SBMA's power to approve or disapprove projects in territories covered by the SBMA is superior over the local government units'. This is based on Section 14 of Republic Act No. 7227,[55] which provides:

Sec. 14. *Relationship with the Conversion Authority and tthe Local Government Units.*

(a) The provisions of existing laws, rules and regulations to the contrary notwithstanding, the Subic Authority shall exercise administrative powers, rule-making and disbursement of funds over the Subic Special Economic Zone in conformity with the oversight function of the Conversion Authority.

(b) In case of conflict between Subic Authority and the local government units concerned on matters affecting the Subic Special Economic Zone other than defense and security, the decision of the Subic Authority shall prevail.

I disagree.

Interpreted this way, this provision may not be in accordance with our Constitution. It violates the provisions relating to the President's supervision over local governments and the principle of local government autonomy.

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have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

[55] Rep. Act No. 7227 (1992), An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

It is our basic policy to ensure the local autonomy of our local government units.[56] Under the Constitution, these local government units include only provinces, cities, municipalities, barangays, and the autonomous regions of Muslim Mindanao and the Cordilleras.[57] Provinces, cities, municipalities, and political subdivisions are created by law based on indicators such as income, population, and land area.[58] Barangays are created through

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[56] CONST. (1987), ART. II, SEC. 25. The State shall ensure the autonomy of local governments; ART. X, SEC. 2. The territorial and political subdivisions shall enjoy local autonomy.

[57] CONST. (1987), ART. X, SEC. 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

[58] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

Section 6. *Authority to Create Local Government Units*. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. *Creation and Conversion*. - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

ordinances.[59] Aside from the law or ordinance creating them, a local government unit cannot be created without the "approval by a majority of the votes cast in a plebiscite in the political units directly affected."[60]

The Subic Bay Metropolitan Authority is not a local government unit. It is a corporate body created by a law.[61] No plebiscite or income, land area, and population requirements need to be reached for its creation. SBMA is merely the implementing arm of the Bases Conversion Development Authority, which is under the President's control and supervision.[62] It does not substitute for the President. It is not even the alter ego of the Chief Executive.

Article X, Section 4 of the Constitution provides that the President's power over our local government units is limited to general supervision, thus:

Section 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

In *The National Liga ng mga Barangay v. Paredes,*[63] this court differentiated between "control" and "supervision":

In the early case of Mondano v. Silvosa, et al., this Court defined supervision as "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and to take such action as prescribed by law to compel his subordinates to perform

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[59] Rep. Act No. 7160 (1991), SEC. 6.

[60] CONST. (1987), ART. X, SEC. 10. No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

[61] Rep. Act No. 7227(1992), SEC. 13.

[62] Rep. Act No. 7227(1992), SEC. 13 and 17.

[63] 482 Phil. 331 [Per *J.* Tinga, *En Banc*].

their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. In Taule v. Santos, the Court held that the Constitution permits the President to wield no more authority than that of checking whether a local government or its officers perform their duties as provided by statutory enactments. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body.[64]

Section 14 of Republic Act No. 7227 cannot be interpreted so as to grant the Subic Bay Metropolitan Authority the prerogative to supplant the powers of the local government units.

Local autonomy ensures that local government units can fully developed as self-reliant communities. The evolution of their capabilities to respond to the needs of their communities is constitutionally guaranteed. In its implementation and as a statutory policy, national agencies must consult the local government units regarding projects or programs to be implemented in their jurisdictions. Article X, Section 2 of the Local Government Code provides:

Section 2. *Declaration of Policy.* –

(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.

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[64] *Id.* at 355-356.

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

In *San Juan v. Civil Service Commission*,[65] this court emphasized that laws should be interpreted in favor of local autonomy:

Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

. . . .

The exercise by local governments of meaningful power has been a national goal since the turn of the century. And yet, inspite of constitutional provisions and, as in this case, legislation mandating greater autonomy for local officials, national officers cannot seem to let go of centralized powers. They deny or water down what little grants of autonomy have so far been given to municipal corporations.

. . . .

In his classic work "Philippine Political Law" Dean Vicente G. Sinco stated that the value of local governments as institutions of democracy is measured by the degree of autonomy that they enjoy. Citing Tocqueville, he stated that "local assemblies of citizens constitute the strength of free nations. x x x A people may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty." (Sinco, Philippine Political Law, Eleventh Edition, pp. 705-706).

Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit of liberty upon which these provisions are based.[66]

Thus, Republic Act No. 7227 has not granted the SBMA with powers superior to those of local government units. The

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[65] G.R. No. 92299, April 19, 1991, 196 SCRA 69 [Per *J*. Gutierrez, Jr., *En Banc*].

[66] *Id*. at 75-80.

power of local governments that give consent to national government projects has not been supplanted.

Final note

The state's duty to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature"[67] can be accomplished in many ways. Before an environmentally critical project can be implemented or prior to an activity in an environmentally critical area, the law requires that the proponents undergo environmental impact assessments and produce environmental impact statements. On this basis, the proponents must secure an ECC which may outline the conditions under which the activity or project with ecological impact can be undertaken. Prior to a national government project, local government units, representing communities affected, can weigh in and ensure that the proponents take into consideration all local concerns including mitigating and remedial measures for any future ecological damage. Should a project be ongoing, our legal order is not lacking in causes of actions that could result in preventive injunctions or damages arising from all sorts of environmental torts.

The function of the extraordinary and equitable remedy of a Writ of Kalikasan should not supplant other available remedies and the nature of the forums that they provide. The Writ of Kalikasan is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The Writ of Kalikasan thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights. After all, we cannot presume that only the Supreme Court can conscientiously fulfill the ecological duties required of the entire state.

[67] CONST. (1987), ART. II, SEC. 16.

Environmental advocacy is primarily motivated by care and compassion for communities and the environment. It can rightly be a passionately held mission. It is founded on faith that the world as it is now can be different. It implies the belief that the longer view of protecting our ecology should never be sacrificed for short-term convenience.

However, environmental advocacy is not only about passion. It is also about responsibility. There are communities with almost no resources and are at a disadvantage against large projects that might impact on their livelihoods. Those that take the cudgels lead them as they assert their ecological rights must show that they have both the professionalism and the capability to carry their cause forward. When they file a case to protect the interests of those who they represent, they should be able to make both allegation and proof. The dangers from an improperly managed environmental case are as real to the communities sought to be represented as the dangers from a project by proponents who do not consider their interests.

The records of this case painfully chronicle the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of Kalikasan. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.

ACCORDINGLY, I vote to **DENY** the Petition in G.R. No. 207282. I also vote to **DENY** the Petitions in G.R. No. 207257 and 207276 insofar as the issue of the validity of the ECCs is concerned.

EN BANC

[G.R. No. 209287. February 3, 2015]

MARIA CAROLINA P. ARAULLO, CHAIRPERSON, BAGONG ALYANSANG MAKABAYAN; JUDY M. TAGUIWALO, PROFESSOR, UNIVERSITY OF THE PHILIPPINES DILIMAN, CO-CHAIRPERSON, PAGBABAGO; HENRI KAHN, CONCERNED CITIZENS MOVEMENT; REP. LUZ ILAGAN, GABRIELA WOMEN'S PARTY REPRESENTATIVE; REP. TERRY L. RIDON, KABATAAN PARTYLIST REPRESENTATIVE; REP. CARLOS ISAGANI ZARATE, BAYAN MUNA PARTY-LIST REPRESENTATIVE; RENATO M. REYES, JR., SECRETARY GENERAL OF BAYAN; MANUEL K. DAYRIT, CHAIRMAN, ANG KAPATIRAN PARTY; VENCER MARI E. CRISOSTOMO, CHAIRPERSON, ANAKBAYAN; VICTOR VILLANUEVA, CONVENOR, YOUTH ACT NOW, *petitioners, vs.* **BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; and FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

[G.R. No. 209135. February 3, 2015]

AUGUSTO L. SYJUCO JR., Ph.D., *petitioner, vs.* **FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT; and HON. FRANKLIN MAGTUNAO DRILON, IN HIS CAPACITY AS THE SENATE PRESIDENT OF THE PHILIPPINES,** *respondents.*

[G.R. No. 209136. February 3, 2015]

MANUELITO R. LUNA, *petitioner, vs.* **SECRETARY FLORENCIO ABAD, IN HIS OFFICIAL CAPACITY AS HEAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; and EXECUTIVE SECRETARY PAQUITO OCHOA, IN HIS OFFICIAL CAPACITY AS ALTER EGO OF THE PRESIDENT,** *respondents.*

[G.R. No. 209155. February 3, 2015]

ATTY. JOSE MALVAR VILLEGAS, JR., *petitioner, vs.* **THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; and THE SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD,** *respondents.*

[G.R. No. 209164. February 3, 2015]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY DEAN FROILAN M. BACUNGAN, BENJAMIN E. DIOKNO and LEONOR M. BRIONES, *petitioners, vs.* **DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HON. FLORENCIO B. ABAD,** *respondents.*

[G.R. No. 209260. February 3, 2015]

INTEGRATED BAR OF THE PHILIPPINES (IBP), *petitioner, vs.* **SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET and MANAGEMENT (DBM),** *respondent.*

[G.R. No. 209442. February 3, 2015]

GRECO ANTONIOUS BEDA B. BELGICA; BISHOP REUBEN M. ABANTE and REV. JOSE L. GONZALEZ, *petitioners, vs.* **PRESIDENT BENIGNO SIMEON C. AQUINO III, THE SENATE OF THE PHILIPPINES,**

REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON; THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER FELICIANO BELMONTE, JR.; THE EXECUTIVE OFFICE, REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; THE DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY SECRETARY FLORENCIO ABAD; THE DEPARTMENT OF FINANCE, REPRESENTED BY SECRETARY CESAR V. PURISIMA; and THE BUREAU OF TREASURY, REPRESENTED BY ROSALIA V. DE LEON, *respondents.*

[G.R. No. 209517. February 3, 2015]

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS 1ST VICE PRESIDENT, SANTIAGO DASMARINAS, JR.; ROSALINDA NARTATES, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE CONSOLIDATED UNION OF EMPLOYEES NATIONAL HOUSING AUTHORITY (CUE-NHA); MANUEL BACLAGON, FOR HIMSELF AND AS PRESIDENT OF THE SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT CENTRAL OFFICE (SWEAP-DSWD CO); ANTONIA PASCUAL, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); ALBERT MAGALANG, FOR HIMSELF AND AS PRESIDENT OF THE ENVIRONMENT AND MANAGEMENT BUREAU EMPLOYEES UNION (EMBEU); and MARCIAL ARABA, FOR HIMSELF AND AS PRESIDENT OF THE KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG MMDA (KKK-MMDA), *petitioners, vs.* **BENIGNO SIMEON C.**

AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO OCHOA, JR., EXECUTIVE SECRETARY; and HON. FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, *respondents.*

[G.R. No. 209569. February 3, 2015]

VOLUNTEERS AGAINST CRIME AND CORRUPTION (VACC), REPRESENTED BY DANTE L. JIMENEZ, *petitioner, vs.* **PAQUITO N. OCHOA, EXECUTIVE SECRETARY, and FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE INTERPRETATION OF THE GENERAL APPROPRIATIONS ACT AND ITS DEFINITION OF SAVINGS, AS WELL AS THE RESOLUTION OF THE ALLEGATION OF GRAVE ABUSE OF DISCRETION DEMAND THE EXERCISE OF JUDICIAL REVIEW; CASE AT BAR.— The consolidated petitions distinctly raised the question of the constitutionality of the acts and practices under the DAP, particularly their non-conformity with Section 25(5), Article VI of the Constitution and the principles of separation of power and equal protection. Hence, the matter is still entirely within the Court's competence, and its determination does not pertain to Congress to the exclusion of the Court. Indeed, the interpretation of the GAA and its definition of *savings* is a foremost judicial function. This is because the power of judicial review vested in the Court is exclusive. x x x The respondents cannot also ignore the glaring fact that the petitions primarily and significantly alleged grave abuse of discretion on the part of the Executive in the implementation of the DAP. The resolution of the petitions thus demanded the exercise by the Court of its aforedescribed power of judicial review as mandated by the Constitution.

2. ID.; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER TO AUGMENT; MUST BE STRICTLY CONSTRUED, IT BEING AN EXCEPTION TO THE GENERAL RULE THAT FUNDING OF PROGRAMS, ACTIVITIES AND PROJECTS SHALL BE LIMITED TO THE AMOUNT FIXED BY CONGRESS FOR THE PURPOSE, AND NECESSARILY, THE UTILIZATION AND MANAGEMENT OF SAVINGS WILL ALSO BE STRICTLY CONSTRUED AGAINST THE EXPANDING SCOPE OF THE POWER TO AUGMENT.— The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose. Necessarily, savings, their utilization and their management will also be strictly construed against expanding the scope of the power to augment. Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse. Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; SUSPENSION OF EXPENDITURE OF APPROPRIATIONS; WHEN THE PRESIDENT SUSPENDS OR STOPS EXPENDITURE OF FUNDS, SAVINGS ARE NOT AUTOMATICALLY GENERATED UNTIL IT HAS BEEN ESTABLISHED THAT SUCH FUNDS ARE FREE FROM ANY OBLIGATION AND THAT THE PURPOSE FOR WHICH THE APPROPRIATION IS AUTHORIZED

HAS BEEN COMPLETED, DISCONTINUED OR ABANDONED.— Section 38 [, Chapter 5, Book VI of the Administrative Code of 1987] refers to the authority of the President "to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act." When the President suspends or stops expenditure of funds, savings are not automatically generated until it has been established that such funds or appropriations are free from any obligation or encumbrance, and that the work, activity or purpose for which the appropriation is authorized has been completed, discontinued or abandoned.

4. **ID.; ID.; ID.; ID.; THE WITHDRAWAL OF UNOBLIGATED ALLOTMENTS EFFECTIVELY RESULTS IN THE SUSPENSION OR STOPPAGE OF EXPENDITURES BUT THE REISSUANCE OF WITHDRAWN ALLOTMENTS TO THE ORIGINAL PROJECTS IS A CLEAR INDICATION THAT THE PROJECTS FROM WHICH THE ALLOTMENTS WERE WITHDRAWN HAVE NOT BEEN DISCONTINUED AND ABANDONED, RENDERING THE DECLARATION OF THE FUNDS AS SAVINGS IMPOSSIBLE.—** Although the withdrawal of unobligated allotments may have effectively resulted in the suspension or stoppage of expenditures through the issuance of negative Special Allotment Release Orders (SARO), the reissuance of withdrawn allotments to the original programs and projects is a clear indication that the program or project from which the allotments were withdrawn has not been discontinued or abandoned. Consequently, as we have pointed out in the Decision, "the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible." In this regard, the withdrawal and transfer of unobligated allotments remain unconstitutional. But then, whether the withdrawn allotments have actually been reissued to their original programs or projects is a factual matter determinable by the proper tribunal.

5. **ID.; ID.; ID.; THE REVERSION TO THE GENERAL FUND OF UNEXPENDED BALANCES OF APPROPRIATIONS WHICH INCLUDES SAVINGS DOES NOT APPLY TO THE CONSTITUTIONAL FISCAL AUTONOMY GROUP DUE**

TO THE FISCAL AUTONOMY THEY ENJOY.— [T]he reversion to the General Fund of unexpended balances of appropriations – savings included – pursuant to Section 28 Chapter IV, Book VI of the *Administrative Code* does not apply to the Constitutional Fiscal Autonomy Group (CFAG), which include the Judiciary, Civil Service Commission, Commission on Audit, Commission on Elections, Commission on Human Rights, and the Office of the Ombudsman. The reason for this is that the fiscal autonomy enjoyed by the CFAG x x x.

6. **ID.; ID.; ID.; SECTION 39 OF THE CODE VIOLATES THE CONSTITUTIONAL MANDATE THAT LIMITS THE AUTHORITY OF THE PRESIDENT TO AUGMENT AN ITEM IN THE GENERAL APPROPRIATIONS ACT TO ONLY THOSE IN HIS OWN DEPARTMENT OUT OF THE SAVINGS IN OTHER ITEMS OF HIS OWN DEPARTMENT'S APPROPRIATIONS.—** Section 39 [, Chapter 5, Book VI of the Administrative Code of 1987] is evidently in conflict with the plain text of Section 25(5), Article VI of the Constitution because it allows the President to approve the use of *any* savings in the regular appropriations authorized in the GAA for programs and projects of *any* department, office or agency to cover a deficit in *any* other item of the regular appropriations. As such, Section 39 violates the mandate of Section 25(5) because the latter expressly limits the authority of the President to augment an item in the GAA to only those in his own Department out of the savings in other items of his own Department's appropriations. Accordingly, Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with. In this connection, the respondents must always be reminded that the Constitution is the basic law to which all laws must conform. No act that conflicts with the Constitution can be valid.

7. **ID.; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER TO AUGMENT; THE TERM *ITEM* THAT MAY BE THE OBJECT OF AUGMENTATION IS THE LAST AND INDIVISIBLE PURPOSE OF A PROGRAM IN THE APPROPRIATION LAW WHICH MUST**

CONTAIN SPECIFIC APPROPRIATIONS OF MONEY.— Section 25(5)[, Article VI] of the 1987 Constitution mentions of the term *item* that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*, we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions x x x. [T]he *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

8. **ID.; ID.; ID.; ID.; THERE MUST BE AN ITEM IN THE GENERAL APPROPRIATIONS ACT FOR WHICH CONGRESS HAS SET ASIDE A SPECIFIED AMOUNT OF PUBLIC FUND TO WHICH SAVINGS MAY BE TRANSFERRED FOR AUGMENTATION PURPOSES.—** [I]n *Nazareth v. Villar*, we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

9. **ID.; ID.; GENERAL APPROPRIATIONS ACT; UNPROGRAMMED FUNDS; MAY ONLY BE RELEASED UPON PROOF THAT THE AGGREGATE REVENUE COLLECTION EXCEEDED THE AGGREGATE REVENUE TARGET AND RELEASES FROM THE UNPROGRAMMED FUND MAY TAKE PLACE PRIOR TO THE END OF THE FISCAL YEAR.—** [T]he respondents justified the use of unprogrammed funds by submitting

certifications from the Bureau of Treasury and the Department of Finance (DOF) regarding the dividends derived from the shares of stock held by the Government in government-owned and controlled corporations. In the decision, the Court has held that the requirement under the relevant GAAs should be construed in light of the purpose for which the unprogrammed funds were denominated as "standby appropriations." Hence, revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. x x x While we maintain the position that aggregate revenue collection must first exceed aggregate revenue target as a pre-requisite to the use of unprogrammed funds, we clarify the respondents' notion that the release of unprogrammed funds may only occur at the end of the fiscal year. There must be consistent monitoring as a component of the budget accountability phase of every agency's performance in terms of the agency's budget utilization as provided in Book VI, Chapter 6, Section 51 and Section 52 of the *Administrative Code of 1987* x x x. Pursuant to the foregoing, the Department of Budget and Management (DBM) and the Commission on Audit (COA) require agencies under various joint circulars to submit budget and financial accountability reports (BFAR) on a regular basis, one of which is the Quarterly Report of Income or Quarterly Report of Revenue and Other Receipts. On the other hand, as Justice Carpio points out in his Separate Opinion, the Development Budget Coordination Committee (DBCC) sets quarterly revenue targets for a specific fiscal year. Since information on both actual revenue collections and targets are made available every quarter, or at such time as the DBM may prescribe, actual revenue surplus may be determined accordingly and releases from the unprogrammed fund may take place even prior to the end of the fiscal year. In fact, the eleventh special provision for unprogrammed funds in the 2011 GAA requires the DBM to submit quarterly reports stating the details of the use and releases from the unprogrammed funds x x x. Similar provisions are contained in the 2012 and 2013 GAAs. However, the Court's construction of the provision on unprogrammed funds is a statutory, not a constitutional, interpretation of an ambiguous phrase. Thus, the construction should be given prospective effect.

10. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOCTRINE OF OPERATIVE FACT; THERE WAS NO NEGATION OF THE PRESUMPTION OF GOOD FAITH WHEN THE COURT HELD THAT THE DOCTRINE CANNOT APPLY TO THE AUTHORS, PROPONENTS AND IMPLEMENTORS OF THE DISBURSEMENT ACCELERATION PROGRAM UNLESS THERE ARE CONCRETE FINDINGS OF GOOD FAITH IN THEIR FAVOR ONLY AFTER HEARING OF ALL PARTIES, FOR SUCH HEARING CAN PROCEED ONLY AFTER ACCORDING ALL THE PRESUMPTIONS, PARTICULARLY THAT OF GOOD FAITH; CASE AT BAR.— [P]aragraphs 3 and 4 of page 90 of the Decision alluded to by the respondents x x x [show] that the Court has neither thrown out the presumption of good faith nor imputed bad faith to the authors, proponents and implementors of the DAP. The contrary is true, because the Court has still presumed their good faith by pointing out that "the doctrine of operative fact x x x cannot apply to the authors, proponents and implementors of the DAP, *unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities*." Note that the proper tribunals can make "*concrete findings of good faith in their favor*" only after a full hearing of *all* the parties in any given case, and such a hearing can begin to proceed only after according all the presumptions, particularly that of good faith, by initially requiring the complainants, plaintiffs or accusers to first establish their complaints or charges before the respondent authors, proponents and implementors of the DAP. It is equally important to stress that the ascertainment of good faith, or the lack of it, and the determination of whether or not due diligence and prudence were exercised, are questions of fact. The want of good faith is thus better determined by tribunals other than this Court, which is not a trier of facts. For sure, the Court cannot jettison the presumption of good faith in this or in any other case. The presumption is a matter of law. It has had a long history. Indeed, good faith has long been established as a legal principle even in the heydays of the Roman Empire. x x x Relevantly, the authors, proponents and implementors of the DAP, being public officers, further enjoy the presumption of regularity in the performance of their functions. This presumption is necessary because they are

clothed with some part of the sovereignty of the State, and because they act in the interest of the public as required by law. However, the presumption may be disputed. At any rate, the Court has agreed during its deliberations to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact. This is because they had nothing to do at all with the adoption of the invalid acts and practices.

11. **ID.; ID.; ID.; ID.; THE NULLIFICATION OF AN UNCONSTITUTIONAL LAW OR ACT CARRIES WITH IT THE ILLEGALITY OF ITS EFFECTS EXCEPT IN CASES WHERE NULLIFICATION OF THE EFFECTS WILL RESULT IN INEQUITY AND INJUSTICE; CASE AT BAR.—** As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply. In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

CARPIO, *J., separate opinion*:

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE DETERMINATION OF WHETHER THE STATUTORY DEFINITION OF CERTAIN TERMS CONFORMS TO THE INTENT AND LANGUAGE OF THE CONSTITUTION IS A CONSTITUTIONAL ISSUE.—** [T]he definition of the term "savings" by statute does not make the threshold issue in these petitions purely a question of statutory interpretation. Whether respondents violated the prohibition in Section 25(5), Article VI of the Constitution, regarding "savings" and "augmentation," falls squarely within the category of a constitutional issue which in turn necessarily demands a

careful examination of the definition of these terms under the relevant GAAs in relation to the use of these terms in the Constitution. x x x While these terms in the Constitution are statutorily defined, a case involving their usage does not automatically reduce the case into one of mere statutory interpretation. On the contrary, it highlights the dynamic process of scrutinizing the statutory definition of certain terms and determining whether such definition conforms to the intent and language of the Constitution.

2. **ID.; LEGISLATIVE DEPARTMENT; GENERAL APPROPRIATIONS ACT; SAVINGS, DEFINED; WHERE CONGRESS DEEMS NECESSARY TO REDEFINE THE TERM "SAVINGS," SUCH REDEFINITION MUST BE CONSISTENT WITH THE CONSTITUTION.—** Prior to 2003, the term "savings" has been consistently defined in the GAAs as "portions or balances of any programmed appropriation x x x free of any obligation or encumbrance still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay." Beginning 2003, a third source of savings was added. Thus, "savings" has been defined in the GAAs as "portions or balances of any programmed appropriation x x x free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of collective negotiation agreements which resulted in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services x x x at a lesser cost." Assuming redefining the term "savings" is deemed necessary by Congress, such redefinition must be consistent with the Constitution. For example, "savings" cannot be declared at anytime, like on the first day of the fiscal year, since it will negate or render useless the power of Congress to appropriate. "Savings" cannot also be declared out of **future** Maintenance and Other Operating Expenses (MOOE) since such declaration will deprive a

government agency of operating funds during the rest of the fiscal year, effectively abolishing the agency or paralyzing its operations. Any declaration of "savings" must be reasonable, that is, there must be appropriations that are no longer needed or can no longer be used for the purpose for which the appropriations were made by Congress.

3. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE ARGUMENT OF MOOTNESS ON THE GROUND THAT THE DISBURSEMENT ACCELERATION PROGRAM HAD ALREADY SERVED ITS PURPOSE NEGATES THE GOVERNMENT'S FEAR OF ADVERSE ECONOMIC EFFECTS THAT COULD POSSIBLY RESULT IN THE DECLARATION OF UNCONSTITUTIONALITY THEREOF; CASE AT BAR.—** [R]espondents' argument of mootness on the ground that the DAP had served its purpose negates the government's fears of the "chilling effect" of the Decision to the economy and the rest of the country. If the DAP had already achieved its goal of stimulating the economy, as respondents repeatedly and consistently argued before the Court, then no adverse economic effects could possibly result in the declaration of unconstitutionality of the DAP and the practices undertaken under the DAP. Hence, the grim scenario of prolonging assistance to victims in case of calamities due to this Court's decision has no basis precisely because to repeat, according to respondents, the DAP had already served its purpose. Significantly, the President has an almost unlimited resources that he can tap and juggle for reconstruction and rehabilitation of affected areas in cases of emergencies and calamities. For these unforeseen tragic natural events, the President can certainly utilize the Calamity Fund or the Contingent Fund in the GAA, as well as his Discretionary Fund and Presidential Social Fund. x x x Moreover, the President has more than enough time to observe and comply with the law and request for a supplemental budget from Congress.

4. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; GENERAL APPROPRIATIONS ACT; THE EARMARKING OF THE JUDICIARY'S SAVINGS FOR THE CONSTRUCTION COST OF THE MANILA HALL OF JUSTICE WAS NEVER TRANSFERRED TO ANY AGENCY BECAUSE THE COURT INTENDS TO CONSTRUCT IT BY ITSELF; CASE AT BAR.—** Pursuant to its "fiscal automony"

under the Constitution, the Court on 17 July 2012 adopted a Resolution setting aside and earmarking from its savings ₱1,865,000,000 for the construction costs of the Manila Hall of Justice. The amount was earmarked for a particular purpose, specifically the construction of the Manila Hall of Justice. However, contrary to respondents' allegation, the amount for this purpose was never transferred to the Department of Justice or to any agency under the Executive branch. In fact, the Court kept the entire amount in its own account because it intends to construct the Manila Hall of Justice by itself. There is nothing in the language of the 17 July 2012 Resolution transferring the amount to the DOJ. Notably, under the 2013 GAA, the Construction/Repair/Rehabilitation of Halls of Justice was already placed under the budget of the Judiciary. Under the 2014 GAA, the provision on Capital Outlays (Buildings and Other Structures) remains under the Judiciary (Annex A of the 2014 GAA). There is no provision in the 2013 and 2014 GAAs for the construction of any Hall of Justice under the DOJ. The construction and maintenance of the Halls of Justice are essentially among the responsibilities of the Judiciary. As such, they should necessarily be included in the annual appropriations for the Judiciary. However, before 2013, Congress placed the construction and maintenance of the Halls of Justice under the DOJ. The inclusion of such item in the DOJ budget clearly creates an anomaly where the Judiciary will have to request the DOJ, an Executive department, to construct a Hall of Justice for the Judiciary. Not only does this undermine the independence of the Judiciary, it also violates ultimately the constitutional separation of powers because one branch is made to beg for the appropriations of another branch to be used in the operations of the former.

5. **ID.; ID.; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER TO AUGMENT; A NON-EXISTENT PROGRAM, ACTIVITY, OR PROJECT CANNOT BE FUNDED BY AUGMENTATION FROM SAVINGS.—** "Savings can augment any ***existing*** item in the GAA, provided such item is in the "respective appropriations" of the same branch or constitutional body. As defined in Section 60, Section 54, and Section 53 of the General Provisions of the 2011, 2012 and 2013 GAAs, respectively, "augmentation implies the **existence x x x of a program, activity, or project**

with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. **In no case shall a non-existent program, activity, or project, be funded by augmentation from savings** x x x." It must be noted that the item **"various other local projects"** in the DBM's Memorandum to the President is not an existing item in the 2011, 2012 and 2013 GAAs. In respondents' Seventh Evidence Packet, the term "other various local projects" refers not to a specific item in the GAAs since no such term or item appears in the relevant GAAs. Rather, such term refers to various soft and hard projects to be implemented by various government offices or local government units. Therefore, to augment "various other local projects," a non-existing item in the GAA, violates the Constitution which requires the existence of an item in the general appropriations law. Likewise, it defies the express provision of the GAA which states that "[i]n no case shall a non-existent program, activity, or project, be funded by augmentation from savings x x x."

6. ID.; ID.; GENERAL APPROPRIATIONS ACT; UNPROGRAMMED FUND; MAY BE RELEASED ONLY WHEN THE REVENUE COLLECTIONS FOR A CERTAIN QUARTER EXCEED THE REVENUE TARGET FOR THE SAME QUARTER.— One of the sources of the DAP is the Unprogrammed Fund under the GAA. The 2011, 2012, and 2013 GAAs have a common condition on the Release of the [Unprogrammed] Fund: that the "**amounts authorized herein shall be released *only* when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution x x x**." The condition in these provisions is clear and thus needs no interpretation, but only application. In other words, this express condition, that actual revenue collections must exceed the original revenue targets for the release of the Unprogrammed Fund, must be strictly observed. It is not for this Court to interpret or lift this condition. To do so is tantamount to repealing these provisions in the GAA and giving the President unbridled discretion in the disbursement of the Unprogrammed Fund. The disbursement of the Unprogrammed Fund is determined on a quarterly basis. The revenue targets are set by the Development Budget Coordination Committee (DBCC) for each quarter of a specific

fiscal year. The DBCC bases its quarterly fiscal targets on historical cumulative revenue collections. x x x Considering that revenue targets are determined quarterly, revenue collections are ascertained on a quarterly basis as well. Therefore, if the government determines that revenue collections for a certain quarter exceed the revenue target for the same quarter, the government can lawfully release the appropriations under the Unprogrammed Fund. In other words, the government need not wait for the end of the fiscal year to release and spend such funds if at the end of each quarter, it has already determined an excess in revenue collections.

7. **ID.; ID.; ID.; KINDS OF FUNDS; PROGRAMMED FUND AND UNPROGRAMMED FUND, DISTINGUISED.—** There are two kinds of funds under the GAA – the programmed fund and the unprogrammed fund. Under the programmed fund, there is a definite amount of spending authorized in the GAA, regardless of whether the government collects the full amount of its revenue targets for the fiscal year. Any deficit can be funded from borrowings. Such deficit spending from the programmed fund is acceptable and is carefully calculated not to trigger excessive inflation. On the other hand, under the unprogrammed fund, the government can only spend what it collects; otherwise, it may trigger excessive inflation. That is why the GAA prohibits spending from the unprogrammed fund unless the corresponding amounts are actually collected. To allow the disbursement of the unprogrammed fund without complying with the express condition imposed under the GAA will send a negative signal to businessmen and creditors because the government will be spending beyond its means – in effect borrowing or printing money. This will adversely affect investments and interest rates. Compliance or non-compliance with the express condition reflects the government's fiscal discipline or lack of it.

8. **ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOCTRINE OF OPERATIVE FACT; AN EXCEPTION TO THE RULE THAT AN UNCONSTITUTIONAL ACT CONFERS NO RIGHTS, IMPOSES NO DUTIES, AND AFFORDS NO PROTECTION.—** [T]he operative fact doctrine never validates or constitutionalizes an unconstitutional law. An unconstitutional act confers no rights, imposes no duties, and affords no protection. An unconstitutional act is inoperative

as if it has not been passed at all. The exception to this rule is the doctrine of operative fact. Under this doctrine, the law or administrative issuance is recognized as unconstitutional but **the effects** of the unconstitutional law or administrative issuance, prior to its declaration of nullity, may be left undisturbed as a matter of **equity and fair play**.

9. **ID.; ID.; ID.; ID.; CAN BE INVOKED ONLY BY THOSE WHO MERELY RELIED IN GOOD FAITH ON THE ILLEGAL OR UNCONSTITUTIONAL ACT, WITHOUT ANY DIRECT PARTICIPATION IN THE COMMISSION OF THE ILLEGAL OR UNCONSTITUTIONAL ACT.—** As a rule of equity, the doctrine of operative fact can be invoked only by those who relied in good faith on the law or the administrative issuance, prior to its declaration of nullity. Those who acted in bad faith or with gross negligence cannot invoke the doctrine. Likewise, those **directly responsible** for an illegal or unconstitutional act cannot invoke the doctrine. He who comes to equity must come with clean hands, and he who seeks equity must do equity. **Only those who merely relied in good faith on the illegal or unconstitutional act, without any direct participation in the commission of the illegal or unconstitutional act, can invoke the doctrine**.

10. **ID.; ID.; ID.; ID.; CANNOT BE INVOKED BY THE AUTHORS OF THE UNCONSTITUTIONAL ACT BUT THE PROPONENTS AND IMPLEMENTORS WHO HAD NO DIRECT PARTICIPATION IN THE COMMISSION OF THE UNCONSTITUTIONAL ACT AND WHO ACTED IN GOOD FAITH CANNOT BE HELD LIABLE FOR THE UNCONSTITUTIONAL ACT; CASE AT BAR.—** In these cases, it was the President who approved NBC 541, and it was the DBM Secretary who issued and implemented it. NBC 541 directed the "withdrawal of unobligated allotments of agencies with low level of obligations as of June 30, 2012" to augment or fund "priority and/or fast moving programs/projects of the national government." x x x [U]nobligated allotments are not savings, which term has a specific and technical definition in the GAAs. Further, paragraph 5.7.3 of NBC 541 authorizing the augmentation of "projects not considered in the 2012 budget" is unconstitutional because under Section 25(5), Article VI of the Constitution, what is authorized is "to augment any item in the general appropriations law for their respective

offices." Since the President and the DBM Secretary approved and issued NBC 541, they are considered the authors of the unconstitutional act. As a consequence, neither the President nor the DBM Secretary can invoke the equitable doctrine of operative fact although they may raise other defenses. As authors of the unconstitutional act, they have to answer for such act. The proponents and implementors of the projects under the DAP are presumed to have relied in good faith that the source, or realignment, of the funds is valid. x x x [T]he proponents and implementors, who had no direct participation in the commission of the unconstitutional act and merely relied in good faith that such funds were validly appropriated or realigned for the projects, cannot be held liable for the unconstitutional act, unless they themselves committed an illegal act, like pocketing the funds.

BRION, *J., separate opinion*: (*qualified concurrence*)

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; TRADITIONAL JURISDICTION AND EXPANDED JURISDICTION, DISTINGUISHED.—** The concept of judicial power under the 1987 Constitution recognizes the Court's *(1)* ***traditional jurisdiction*** to settle actual cases or controversies; and *(2)* its ***expanded jurisdiction*** to determine whether a government agency or instrumentality committed grave abuse of discretion in the course of its actions. The exercise of ***either power*** involves the exercise of the Court's power of judicial review, *i.e.,* the Court's authority to strike down acts – of the Legislative, the Executive, the constitutional bodies, and the administrative agencies – that are contrary to the Constitution. x x x Under the Court's **traditional jurisdiction**, what are involved are controversies brought about by rights, whether public or private, which are demandable and enforceable against another. Thus, the "standing" that must be shown is based on the possession of rights that are demandable and enforceable or which have been violated, giving rise to damage or injury and to actual disputes or controversies between or among the contending parties. In comparison, the **expanded jurisdiction** – while running along the same lines – involves a dispute of a totally different nature. It does not address the rights that a private party may demand of another party, whether public or private. It solely addresses the relationships of parties

to any branch or instrumentality of the government, and allows direct but limited redress against the government; the redress is not for all causes and on all occasions, but only when a grave abuse of discretion on the part of government is alleged to have been committed, to the petitioning party's prejudice. Thus, the scope of this judicial power is very narrow, but its focus also gives it strength as it is a unique remedy specifically fashioned to actualize an active means of redress against an all-powerful government.

2. ID.; ID.; ID.; TRADITIONAL JURISDICTION; REQUISITES.— Judicial review under the Court's **traditional jurisdiction** requires the following justiciability requirements: (1) the existence of an ***actual case or controversy*** calling for the exercise of judicial power; (2) the person challenging the act must have the ***standing*** to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must ***be raised at the earliest opportunity***; and (4) the issue of constitutionality must be the very ***lis mota*** of the case.

3. ID.; ID.; ID.; EXPANDED JURISDICTION; TRIGGERED BY THE COMMISSION OF GRAVE ABUSE OF DISCRETION WHICH TAKES THE PLACE OF THE ACTUAL CASE OR CONTROVERSY REQUIREMENT UNDER THE COURT'S TRADITIONAL JUDICIAL POWER.— [T]he exercise of the Court's **expanded jurisdiction** to determine whether grave abuse of discretion amounting to lack of or excess of jurisdiction has been committed by the government, is triggered by a *prima facie* showing of grave abuse of discretion in the course of governmental action. A reading of Section 1, Article VIII of the 1987 Constitution x x x shows that ***textually***, the commission of grave abuse of discretion by the government is the cause that triggers the Court's expanded judicial power and that gives rise to the actual case or controversy that the complaining petitioners (who had been at the receiving end of the governmental grave abuse) can invoke in filing their petitions. In other words, the commission of grave abuse takes the place of the actual case or controversy requirement under the Court's traditional judicial power.

4. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION MUST AMOUNT TO LACK OR EXCESS OF JURISDICTION SO THE COURT HAS TO LOOK AT THE LAWS GRANTING THE POWER TO THE GOVERNMENT OFFICIALS OR AGENCIES INVOLVED, TO DETERMINE WHETHER THEY ACTED OUTSIDE OF THEIR LAWFULLY-GIVEN POWERS; CASE AT BAR.— The present case involves the Court's expanded jurisdiction, involving the determination of whether grave abuse of discretion was committed by the government, specifically, by the Executive. Based on jurisprudence, such grave abuse must amount to lack or excess of jurisdiction by the Executive: otherwise stated, ***the assailed act must have been outside the powers granted to the Executive by law or by the Constitution, or must have been exercised in such a manner that he exceeded the power granted to him.*** In examining these cases, the Court necessarily has to look at the laws granting power to the government official or agency involved, to determine whether they acted outside of their lawfully-given powers. And to determine whether the Executive gravely abused its discretion in creating and implementing the DAP, the Court must necessarily also look at both the laws governing the budget expenditure process and the relevant constitutional provisions involving the national budget. In the course of reviewing these laws, the Court would have to compare these provisions, and in case of discrepancy between the statutory grant of authority and the constitutional standards governing them, rule that the latter must prevail.

5. ID.; LEGISLATIVE DEPARTMENT; POWER TO DEFINE "SAVINGS"; SUBJECT TO LIMITATION.— The definition of savings is an aspect of the ***power of the purse*** that constitutionally belongs to Congress, *i.e.,* the power to determine the ***what***, ***how, how much*** and ***why*** of public spending, and includes the determination of when spending may be stopped, as well as where these savings may be transferred. This explains why we looked at the definition of savings in the past GAAs in determining whether the DAP violated the general prohibition against transfers and augmentation in Section 25 (5), Article VI, of the 1987 Constitution. While the power to define "savings" rightfully belongs to Congress as an aspect of its power of the purse, it is not an unlimited power; it is subject to the limitation that the national budget or the GAA is a law

that must necessarily comply with the constitutional provisions governing the national budget, as well as with the jurisprudential interpretation of these constitutional provisions.

6. **ID.; ID.; GENERAL APPROPRIATIONS ACT; UNPROGRAMMED FUND; RELEASES MAY BE MADE UNDER THE UNPROGRAMMED FUND WHEN THE REVENUE COLLECTIONS EXCEEDED THE ORIGINAL REVENUE TARGETS.—** [T]he general provision for releases for items under the Unprogrammed Fund requires that revenue collections must first exceed the original targets before these collections may be released. Assuming *in arguendo* that the Executive can determine this only by March 31 of the next fiscal year, then no Unprogrammed Fund could be released at all because the requirement in the general provision cannot be timely complied with. In other words, the respondent's argument regarding the impracticality of the proviso directly impacts on, and negates, the general provision that the proviso qualifies. To illustrate, assuming that the original revenue targets had been exceeded (without need for unexpected income), releases for items under the Unprogrammed Fund would still not be made based on the respondents' assertion that revenue collections can only be determined by the first quarter of the next fiscal year. From the point of view of history, I do not think that this general provision on releases for items under the Unprogrammed Fund would have been in place as early as FY 2000 if it could not actually be implemented. This improbability, as well as the consistent requirement that original revenue targets first be exceeded before funds may be released for items under the Unprogrammed Fund, clearly supports the Court's interpretation on the special conditions for releases under the Unprogrammed Fund. Additionally, as both the *ponencia* and Justice Carpio point out, total revenue targets may be determined on a quarterly basis. Thus, requiring that total revenue targets be first met before releases may be made under the Unprogrammed Funds is not as impracticable and absurd as the respondents picture them to be.

7. **CIVIL LAW; EFFECT AND APPLICATION OF LAWS; STATUTORY INTERPRETATION OF LAWS; WHEN MAY APPLY PROSPECTIVELY.—** Prospective application x x x is ***application in the present*** and in all future similar cases.

The Court's statutory interpretation of a law applies prospectively if it ***does not apply to actions prior*** to the Court's decision. We have used this kind of application in several cases when we opted not to apply new doctrines to acts that transpired prior to the pronouncement of these new doctrines. x x x The ***prospective application of a statutory interpretation, however, does not extend to its application to the case in which the pronouncement or new interpretation was made.*** x x x [T]he prospective application of a statutory interpretation of a law applies to the facts of ***the case in which the interpretation was made*** and to acts subsequent to this pronouncement. The prospective effect of a statutory interpretation cannot be made to apply only to acts after the Court's new interpretation; the interpretation applies also to the case in which the interpretation was laid down. Statutory interpretation, after all, is used to reach a decision on the immediate case under consideration. x x x The present case poses to us the issue of whether the DAP made releases under the Unprogrammed Fund in violation of the special conditions for its release. In resolving this issue, we clarified the meaning of one of these conditions, and found that it had been violated. Thus, the Court's statutory interpretation of the release of unprogrammed funds applies to the present case, and to cases with similar facts thereafter. The release of unprogrammed funds under the DAP is void and illegal, for having violated the special conditions requisite to their release.

8. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER OF AUGMENTATION; WHEN VALID; THE TERM "ITEM," DEFINED.—** For an augmentation to be valid, the savings should have been transferred to an item in the general appropriations act. This requirement reflects and is related to two other constitutional provisions regarding the use of public funds, ***first***, that no money from the public coffers may be spent except through an appropriation provided by law; and ***second***, that the President may veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the items to which he does not object. x x x ***[T]he power of augmentation cannot be exercised to circumvent or dilute these principles, such that an interpretation of what***

constitutes as an item for purposes of augmentation cannot be at odds with the exercise of the President's power to veto items in the GAA or Congress's exclusive, plenary power of the purse. x x x [W]e have narrowed our description of the term "item" in an appropriation bill so that *(1)* it now must be indivisible; *(2)* that this indivisible amount be for a specific purpose; and *(3)* that there must exist a singular correspondence between the indivisible amount and the specified, singular purpose. In *Nazareth v. Villar*, a case we cited in *Belgica*, we even required, for augmentation purposes, that there must be an existing item, project, activity, purpose ***or*** object of expenditure with an appropriation to which the savings would be transferred.

9. ID.; ID.; ID.; ID.; THE EXECUTIVE USURPS THE CONGRESS POWER TO APPROPRIATE WHEN IT OPTS TO AUGMENT AN EXPENDITURE ITEM THAT CONGRESS HAD NO INTENTION OF FUNDING; BUDGETARY PROCESS, EXPLAINED.— The budgetary process is a complex undertaking in which the Executive and Congress are given their constitutionally-assigned tasks, neither of whom can perform the function of the other. The budget proposal comes from the Executive, which initially makes the determination of the PAPs to be funded, and by how much each allotment class (*i.e.*, the expense category of an item of appropriation, classifying it either as a Capital Outlay (CO), Maintenance and Other Operating Expense (MOOE), or Personal Services (PS)) will be funded. The proposal would then be given to the Congress for scrutiny and enactment into law during its legislative phase. At this point, Congress can amend the items in the budget proposal but cannot increase its total amount. These amendments may include increasing or decreasing the expense categories found in the proposal; it may, in its scrutiny of the budget, determine that certain PAPs need capital outlay or additional funds for personnel services, or even eliminate allotments for capital outlay for certain PAPs. In this light, I concluded then that when the Executive opts to augment an expenditure item that Congress had no intention of funding, then it usurped Congress's power to appropriate.

10. ID.; ID.; ID.; ID.; THE JURISPRUDENTIAL TEST FOR DETERMINING AN ITEM PERTAINS TO A PROGRAM, ACTIVITY OR PROJECT (PAP); THE PRESIDENT MAY

VALIDLY AUGMENT THE PAP REPRESENTING AN ITEM IN AN APPROPRIATION LAW, INCLUDING ITS EXPENDITURE CATEGORIES THAT INITIALLY HAD NO FUNDING.— [T]he power of augmentation, as an exception to the general rule against transfer of appropriations, must be construed in relation to both the President's item veto power and Congress's exclusive power to appropriate. Considering that our interpretation of the meaning of what constitutes an item in the present case would necessarily affect what the President may veto in an appropriation law, I agree with the decision to clarify that ***the jurisprudential tests for determining an item pertains to a PAP, and not its expense categories.*** Given, too, the interrelated nature of the President's veto power and his power to augment an item in the GAA, I agree that what may be vetoed (and consequently, what may be augmented) is the total appropriation for a PAP, and not each of its allotment class. Notably, past presidential vetoes show direct vetoes of items and special provisions, not of a specific allotment class of a PAP. Thus, ***an appropriation for a PAP is the indivisible, specified purpose for which a public fund has been set aside for.*** The President, therefore, may validly augment the PAP representing an item in an appropriation law, including its expenditure categories that initially had no funding.

11. **ID.; ID.; ID.; ID.; AN ITEM CANNOT BE AUGMENTED WITHOUT A DEFICIENCY.—** I would like to point out that we are dealing with an augmentation, and not a veto – hence, ***aside from the consideration of the existence of an item, it must also be determined whether this augmented item had a deficiency***. The very nature of an augmentation points to the existence of a deficiency. An item must have been in existence, and must demonstrably need supplementation, before it may be validly augmented. ***Without a deficiency, an item cannot be augmented, otherwise, it would violate the constitutional prohibition against money being spent without an appropriation made by law.*** An item that has no deficiency does not need additional funding; thus, the funding of an item with no deficiency could only mean that an additional PAP, not otherwise considered in the GAA nor included in the item sought to be augmented, would be funded by public funds. This interpretation finds support and statutory authority in the definition of augmentation in the GAA of 2011 and 2012 x x x.

Thus, a PAP that has no deficiency could not be augmented. Augmenting an otherwise sufficiently-funded PAP violates the constitutional command that public money should be spent only through an appropriation made by law; too, if committed during the implementation of the 2011 and 2012 GAA, it also contravenes the definition of augmentation found therein.

12. **ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOCTRINE OF OPERATIVE FACT; A DECLARATION OF UNCONSTITUTIONALITY OF A LAW RENDERS IT VOID; EXCEPTION.—** [A] declaration of unconstitutionality of a law renders it void: the unconstitutional law is not deemed to have ever been enacted, and no rights, obligations or any effect can spring from it. The doctrine of operative fact mitigates the harshness of the declared total nullity and recognizes that the unconstitutional law, prior to the declaration of its nullity, was an operative fact that the citizenry followed or acted upon. This doctrine, *while maintaining the invalidity of the nullified law*, provides for an exceptional situation that recognizes that ***acts done in good faith and in reliance of the law prior to its invalidity***, are effective and can no longer be undone.

13. **ID.; ID.; ID.; ID.; PERTAINS TO THE EFFECTS OF DECLARATION OF UNCONSTITUTIONALITY OF AN ACT OR LAW SUCH THAT IT ADDRESSES THE SITUATION OF THOSE WHO ACTED UNDER THE INVALIDATED LAW PRIOR TO THE DECLARATION OF INVALIDITY.—** [T]he doctrine is about the ***effects*** of the declaration of the unconstitutionality of an act, law or measure. It is not about the unconstitutionality itself or its underlying reasons. The doctrine in fact was formulated ***to address the situation of those who acted under an invalidated law prior to the declaration of invalidity***. Thus, while as a general rule, an unconstitutional law or act is a nullity and carries no effect at all, the operative fact doctrine holds that its ***effects*** may still be recognized (although the law or act remains invalid) with respect to those who had acted and relied in good faith on the unconstitutional act or law prior to the declaration of its invalidity; to reiterate what I have stated before, the invalidated law or act was then an operative fact and those who relied on it in good faith should not be prejudiced as a matter of equity and justice.

14. ID.; ID.; ID.; ID.; GOOD FAITH ONLY CHARACTERIZES THE FACT OF RELIANCE WHICH REFERS TO THE RELIANCE BY THOSE WHO HAD ACTED UNDER THE UNCONSTITUTIONAL ACT OR LAW PRIOR TO THE DECLARATION OF ITS INVALIDITY AND COULD NOT REFER TO ANY POTENTIAL CRIMINAL, CIVIL OR ADMINISTRATIVE LIABILITY FOR THE PARTICIPATION IN THE DISBURSEMENT ACCELERATION PROGRAM; CASE AT BAR.— The key essential word under the doctrine is the ***fact of "reliance"***; "good faith" only characterizes the reliance made. It was in this manner and under this usage that "good faith" came into play in the present case. The clear reference point of the term was to the "reliance" by those who had acted under the unconstitutional act or law prior to the declaration of its invalidity. x x x [A]ll these refer to the "effects" of an invalidated act or law. No reference at all is made of the term "good faith" (as used in the operative fact doctrine sense) to whatever criminal, civil or administrative liability a participant in the DAP may have incurred for his or her participation. Two reasons explain why the term "good faith" could not have referred to any potential criminal, civil or administrative liability of a DAP participant. The ***first reason*** is that the determination of criminal, civil or administrative liability is not within the jurisdiction of this Court to pass upon *at this point*. The Court therefore has no business speaking of good faith in the context of any criminal, civil or administrative liability that might have been incurred; in fact, the Court never did. If it did at all, it was to explain that good faith in that context is out of place in the present proceedings because the issue of criminal, civil or administrative liability belongs to other tribunals in other proceedings. x x x The ***second reason***, related to the first, is that cases touching on the criminal, civil or administrative liabilities incurred for participation in the DAP affair are cases that have to wait for another day at a forum other than this Court. These future cases may only be affected by our present ruling in so far as we clarified *(1)* the effects of an unconstitutional statute on those who ***relied in good faith,*** under the operative fact doctrine, on the unconstitutional act prior to the declaration of its unconstitutionality; and *(2)* that the authors, proponents and implementors of the unconstitutional DAP are not among those who can seek cover

behind the operative fact doctrine as they ***did not rely on the unconstitutional act*** prior to the declaration of its nullity. They were in fact the parties responsible for establishing and implementing the DAP's unconstitutional terms and in these capacities, cannot rely on the unconstitutionality or invalidity of the DAP as reason to escape potential liability for any unconstitutional act they might have committed. For greater certainty and in keeping with the *strict meaning of the operative fact doctrine*, the authors, proponents and implementors of the DAP are those who ***formulated, made or approved*** the DAP as a budgetary policy instrument, including in these ranks the sub-cabinet senior officials who effectively recommended its formulation, promulgation or approval and who actively participated or collaborated in its implementation. They cannot rely on the terms of the DAP as in fact they were its originators and initiators.

15. ID.; ID.; ID.; ID.; THE COURT'S DISCUSSION THEREON IS INTEGRAL TO THE COURT'S DECISION AND NOT AN *OBITER DICTUM*, AS IT PROVIDES HOW THE EFFECT OF THE DECLARATION OF UNCONSTITUTIONALITY WOULD BE IMPLEMENTED; CASE AT BAR.— [T]he Court's declaration of the unconstitutionality of several aspects of the DAP necessarily produces two main effects: (1) it voids the acts committed through the DAP that are unconstitutional; and (2) the PAPs that have been funded or benefitted from these void acts are likewise void. By way of exception, the operative fact doctrine recognizes that the DAP's operation had consequences, which would be iniquitous to undo despite the Court's declaration of the DAP's unconstitutionality. Necessarily, the Court would have to specify the application of the operative fact doctrine, and in so doing, distinguish between the two main effects. In other words, given the unconstitutionality's two effects, the Court, logically, would have to distinguish which of these effects remains recognized by the operative fact doctrine. This is the reason for the discussion distinguishing between the applicability of the operative fact doctrine to PAPs that relied in good faith to the DAP's existence, and its non-application to the DAP's authors, proponents and implementors. The operative fact doctrine, given its nature and definition, only applies to the PAPs, but cannot apply to the unconstitutional act itself. As the doctrine cannot

apply to the act, with more strong reason can it not apply to the acts of its authors, proponents and implementors of the unconstitutional act. It is in this sense and for these reasons that the Court distinguished between the PAPs that benefitted from the DAP, and the DAP's authors, proponents and implementors. It is also in this sense that the Court pointed out that the DAP's authors, proponents and implementors cannot claim any reliance in good faith; the operative fact doctrine does not apply to them, as the nature of their participation in the DAP's conception is antithetical to any good faith reliance on its constitutionality. Without the Court's discussion on the operative fact doctrine and its application to the case, the *void ab initio* doctrine applies to nullify both the acts and the PAPs that relied on these acts. Hence, the Court's discussion on the operative fact doctrine is integral to the Court's decision – it provides how the effect of the Court's declaration of unconstitutionality would be implemented. The discussion is not, as the *ponente* vaguely described it, an "*obiter* pronouncement."

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; GENERAL APPROPRIATIONS ACT; PROVIDES AUTHORITY TO SPEND BUT IT DOES NOT COMPEL ACTUAL EXPENDITURES.— The General Appropriations Act is the law required by the Constitution to authorize expenditures of public funds for specific purposes. Each appropriation item provides for the limits of the amount that can be spent by any office, agency, bureau or department of government. The provision of an appropriation item does not require that government must spend the full amount appropriated. In other words, the General Appropriations Act provides authority to spend; it does not compel actual expenditures. By providing for the maximum that can be spent per appropriation item, the budget frames a plan of action. It is enacted on the basis of projections of what will be needed within a future time frame — that is, the next year in the case of the General Appropriations Act. Both the Constitution and the law provide that the President initially proposes projects, activities, and programs to meet the projected needs for the next year. Congress scrutinizes the proposed budget and is the constitutional authority that

passes the appropriations act that authorizes expenditures of the entire budget through appropriation items subject to the flexibilities provided in the Constitution, existing law, and in the provisions of the General Appropriations Act not inconsistent with the Constitution or existing law.

2. ID.; EXECUTIVE DEPARTMENT; THE WITHHOLDING OF UNOBLIGATED ALLOTMENTS BY THE PRESIDENT IS NOT UNCONSTITUTIONAL PER SE, AS IT CAN BE DONE LEGITIMATELY FOR A VARIETY OF REASONS.— The Constitution provides for clear delineations of authority. Congress has the power to authorize the budget. However, it is the President that generally decides on when and how to allocate funds, order or encourage agencies to obligate, and then cause the releases of the funds to contracted entities. The process of obligation, which includes procurement as well as the requirements for the payment, or release of funds may be further limited by law. Thus, withholding unobligated allotments is not unconstitutional per se. It can be done legitimately for a variety of reasons. The revenues expected by government may not be forthcoming as expected. The office or agency involved may not have the capacity to spend due to organizational problems, corruption issues, or even fail to meet the expectations of the President himself. In my view, the President can withhold the unobligated allotment until the needed corrective measures are done within the office or agency. With the amount withheld, the President may also ensure that the other appropriations items are fully funded as authorized in the general or in any supplemental appropriations act. This flexibility is subject to several constitutional constraints. First, he can only spend for a project, activity, or program whose expenditure is authorized by law. Second, he cannot augment any appropriations item within his department unless it comes from savings.

3. ID.; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER TO AUGMENT; THE CONSTITUTIONAL MEANING OF THE TERM "SAVINGS" MUST BE RELATED ONLY TO THE PRIVILEGE TO AUGMENT.— Savings is a term that has a constitutionally relevant meaning. The constitutional meaning of the term savings allows Congress to further refine its details. x x x From a constitutional perspective, I view

"savings" as related only to the privilege to augment. As a constitutional concept, it cannot be endowed with a meaning that will practically undermine the constitutional grant of power to Congress to limit and authorize appropriations items. There must be a reasonable justification for the failure of the spending authority to spend the amount declared as savings from an appropriated item. This reasonable justification must be based on causes external to the authority deciding when to declare actual savings. On the other hand, given that the power of Congress to determine when the heads of constitutional organs and departments may exercise the prerogative of augmentation, Congress, too, may define the limits of the concept of savings but only within the parameters of its constitutional relevance. x x x Definitely, the difference between the actual expenditure and the authorized amount appropriated by law as a result of the completion of a project is already savings that can be used to augment other appropriations items within the same department. x x x There is no need to wait until the end of the year to declare savings for purposes of augmentation.

4. **ID.; ID.; ID.; CONGRESS HAS THE POWER TO AUTHORIZE APPROPRIATIONS ITEMS BUT THE CONSTITUTION PROHIBITS THEIR AUGMENTATION; EXCEPTION.—** To underscore the power of Congress to authorize appropriations items, the Constitution prohibits their augmentation. There is no authority to spend beyond the amounts set for any appropriations item. Congress receives information from the executive as to the projected revenues prior to passing a budget. Members of Congress deliberate on whether they will agree to the amounts allocated per project, activity, or program and thus, the extent of their concurrence with the priorities set by the President with the latter's best available estimates of what can happen the following year. The authorities that will eventually spend the amounts appropriated cannot undermine this congressional power of authorization. However, the Constitution itself provides for an exception. Appropriated items may be augmented but only from savings and only if the law authorizes the heads of constitutional organs or departments to do so. It is in this context that savings gains constitutional relevance.

5. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; SUSPENSION OF EXPENDITURE OF APPROPRIATIONS;**

THE PRESIDENT'S POWER TO SUSPEND A PROJECT IN ORDER TO DECLARE SAVINGS FOR PURPOSES OF AUGMENTATION MAY BE CONSTITUTIONAL IF THE GROUNDS FOR SUSPENSION ARE REASONABLE AND SUCH REASONABLE GROUNDS ARE STATUTORILY PROVIDED.— The justification for projects, activities, and programs to be considered as "finally discontinued" and "abandoned" must be clear in order that their funds can be considered savings for purposes of augmentation. Thus, in my Concurring Opinion in the main Decision of this case, I clarified that this should be read in conjunction with the Government Accounting and Auditing Manual (GAAM) provisions x x x. The President's power to suspend a project *in order to declare savings for purposes of augmentation* may be statutorily granted in Section 38 of the Revised Administrative Code, but it cannot be constitutional unless such grounds for suspension are reasonable and such reasonable grounds are statutorily provided. Under the present state of our laws, it will be reasonable when read in relation to the GAAM.

6. ID.; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER TO AUGMENT; WHAT WILL MAKE THE AUGMENTATION CONSTITUTIONAL IS NOT ONLY THE EXISTENCE OF AN APPROPRIATION ITEM BUT IT IS ALSO ESSENTIAL THAT IT CAN BE CLEARLY AND CONVINCINGLY SHOWN THAT IT COMES FROM LEGITIMATE SAVINGS IN A CONSTITUTIONAL AND STATUTORY SENSE.— Fundamental to a proper constitutional exercise of the prerogative to augment is the existence of an appropriations item. But it is not only the existence of an appropriation item that will make augmentation constitutional. It is likewise essential that it can be clearly and convincingly shown that it comes from legitimate savings in a constitutional and statutory sense. In other words, having appropriation covers to the extent of showing that the item being funded is authorized is not enough. For each augmentation, the source in savings must likewise be shown. This is why constitutional difficulties arose in the kind of pooled funds done under the Disbursement Allocation Program (DAP). There was the wholesale assertion that all such funds came from savings coming from slow moving projects. This is not enough to determine whether the

requirements of constitutionality have been met. For there to be valid savings of every centavo in the pooled funds, there must be a showing (a) that the activity has been completed, finally discontinued and abandoned; and (b) why such activity was finally discontinued and abandoned and its consistency with existing statutes. x x x The source of the funds in the pool called DAP should be shown to have come from legitimate savings in order that it can be used to augment appropriations items.

7. **ID.; ID.; ID.; ID.; THE ENTIRE APPROPRIATIONS ITEM MAY BE AUGMENTED FROM SAVINGS AND THE AMOUNT OF AUGMENTATION IS NOT CONSTITUTIONALLY LIMITED WHEN THERE ARE LEGITIMATE SAVINGS AND STATUTORY AUTHORITY TO MODIFY AN APPROPRIATIONS ITEM.—** The amount of augmentation is not constitutionally limited when there are legitimate savings and statutory authority to modify an appropriations item. Furthermore, there is a difference between an appropriations item and the expense categories within these items. The Constitution only mentions that the entire appropriations item may be augmented from savings. Neither the Constitution nor any provision of law limits the expense category that may be used within the item that will be augmented. Thus, I agree with the *ponencia* that when an item is properly augmented, additional funds may be poured into Personnel Services, MOOE, or Capital Outlay even if originally the appropriations item may not have had a provision for any one of these expense categories.

8. **ID.; ID.; ID.; ID.; EARMARKING SAVINGS FOR A PARTICULAR PURPOSE WITHOUT NECESSARILY SPENDING IT IS NOT AUGMENTATION AND IT IS A PREROGATIVE THAT CAN BE EXERCISED WITHIN THE JUDICIARY'S PREROGATIVE OF FISCAL AUTONOMY.—** Earmarking savings for a particular purpose without necessarily spending it is not augmentation. It is a prerogative that can be exercised within the judiciary's prerogative of fiscal autonomy. With respect to the alleged request to allocate funds from the Department of Justice for the judiciary's construction of the Malabon Halls of Justice, suffice it to say that this resolution was not implemented. The Chief Justice withdrew the request seasonably. This withdrawal

was confirmed by a Resolution issued by this court. Decisions of this court *En Banc* are subject to limited reconsideration. Reconsideration presupposes that this court also has the ability to correct itself in a timely fashion. ***The more salient question is why both the President and Congress insist that the items for renovation, repair and construction of court buildings should not be put under the judiciary. Instead it is alternatively provided in the General Appropriations Act under the budget of either the Department of Justice or the Department of Public Works and Highways. Both of these agencies are obviously under the executive. This produces excessive entanglements between the judiciary and the executive and undermines the constitutional requirement of independence. In my view, these appropriation items are valid but its location (under the executive) is unconstitutional. These items should be read and deemed a part of the judiciary's budget.***

9. **REMEDIAL LAW; ACTIONS; JUDGMENTS; *OBITER DICTUM*; SERVES THE PURPOSE OF ELUCIDATION BUT SHOULD NOT BE READ AS BINDING RULE OF THE CASE, AS IT IS NOT ESSENTIAL TO ARRIVE AT A RESOLUTION OF THE ISSUES ENUMERATED BY THE COURT AS FUNDAMENTAL TO REACH THE DISPOSITION OF THE CASE; CASE AT BAR.—** I fully concur with the ponencia's characterization that the pronouncements of good faith or bad faith of authors, proponents, and implementors of the DAP are obiter. ***Obiter dictum is part of the flourish of writing an opinion. They serve the purpose of elucidation but should not be read as binding rule of the case (ratio decidendi). This is so because the parties did not litigate them as issues. They are not essential to arrive at a resolution of the issues enumerated by this court as fundamental to reach the disposition of this case***. There was neither a declaration of illegality or unconstitutionality of any of or all of the 116 projects identified to have benefitted from the DAP mechanism nor was there a declaration that the DAP mechanism per se was unconstitutional. That the administration chose to stop or suspend all these projects was not called for by the decision. The dispositive of the decision (*fallo*) only declared acts or practices under the DAP as unconstitutional, *e.g.* cross-border transfers, funding

of programs not covered by any appropriation under the General Appropriations Act, and the declaration of savings without complying with the requirements under the General Appropriations Act. Unless all the DAP projects were considered by the executive as having elements of the unconstitutional acts, the decision to stop or suspend was theirs alone.

10. POLITICAL LAW; LEGISLATIVE DEPARTMENT; GENERAL APPROPRIATIONS ACT; UNPROGRAMMED FUNDS; SAVINGS FROM PROGRAMMED APPROPRIATION SHOULD NOT BE USED FOR ANY OF THE PURPOSES ENUMERATED IN THE ARTICLE ON UNPROGRAMMED FUNDS.— The article on Unprogrammed Funds is generally the appropriations item that allows expenditures from income arising from collected revenues exceeding those targeted. Starting from the General Appropriations Act of 2012, the applicable laws consistently no longer included the clause, *"including savings generated from programmed appropriations for the year,"* found in the General Appropriations Act of 2011 from the common first special provision. This manifests the clear intention that none of the *savings from programmed appropriation* will be used for any of the purposes enumerated in the article on Unprogrammed Funds. x x x ***Starting FY 2012, therefore, expenditures from the purposes enumerated in Unprogrammed Funds using "savings" from programmed appropriations would be void for lack of statutory authority to spend for such purposes in such manner.***

11. ID.; ID.; ID.; ID.; REVENUE COLLECTED IN EXCESS OF THE SUBMITTED TARGETS MAY NOT BE USED TO AUGMENT PROGRAMMED APPROPRIATIONS.— Generally, revenue collections in excess of targeted revenues cannot be considered as "savings" in the concept of Article VI, Section 25(5) of the Constitution. However, the disposition of these funds may also be provided in the General Appropriations Act or in a supplemental budget. This is consistent with the basic principle that Congress authorizes expenditures of public funds as found in Article VI, Section 29(1) of the Constitution x x x. Thus, apart from the first special provision, the ninth provision x x x [provides that] [t]he deficiency referred to in this special provision refers to the inadequacy of the amount already appropriated. The purpose of addressing the deficiency is to ensure that the income generating activities of the offices and

agencies continue. It grants flexibility in as much as the actual demand for the government services enumerated might not be exactly as predicted. *To achieve this flexibility, this special provision does not require that there be a showing that total collected revenue for all sources of funds exceed total targeted revenue.* The tenth special provision for Unprogrammed Funds in the General Appropriations Act of 2011 more specifically addresses the use of excess income for revenue generating agencies and offices x x x. This special provision specifically authorizes the use of the excess in collected revenue over targeted revenue for the collecting agency. This flexibility in the budget allows government to continually ensure that income-generating activities of government do not come to a standstill for lack of funds. More than an expense, this funding can be seen as an investment into the operations of these special offices and agencies. *Again, similar to the ninth special provision, there is no need to show that the total revenue collections of government exceed their submitted total targeted collections.* Other than these statutory authorities, Unprogrammed Funds or revenue collected in excess of the submitted targets may not be used to augment programed appropriations. Any such expenditure will be void for lack of statutory authority required by the Constitution.

12. ID.; ID.; ID.; ID.; THE STATUTORY PROVISION FOR THE RELEASE OF UNPROGRAMMED FUNDS MAY BE REASONABLY INTERPRETED AS ALLOWING EXPENDITURES FOR THE PURPOSES ENUMERATED WHEN IT CAN BE SHOWN THAT THE ACTUAL REVENUE COLLECTION IN ONE INCOME SOURCE EXCEEDS THE TARGET FOR THAT SOURCE AS SUBMITTED BY THE PRESIDENT IN HIS NATIONAL EXPENDITURE PROGRAM.— [T]he absolute and universal requirement that expenditures from Unprogrammed Funds will only be allowed when the total revenue collected exceeds the submitted targets may not be supported even by the text of the first special provision. The text of the first special provision reads: “Release of Funds . . . shall be released only when the revenue collections exceed the original revenue targets submitted by the President[.]” Revenue targets are in plural form. The provision also fails to qualify that the basis for reckoning whether the excess is the ***total*** “original revenue target[s].” The absence of the adjective

"total" is palpable and unmistakable. The ponencia proposes that we discover an unequivocal intent on the part of this statute that the authority to spend for any purpose covered by this title (Unprogrammed Funds) is present only when the actual revenue collection exceeds the total revenue target submitted by the President. While this interpretation may have its own reasonable merit, it is not the only interpretation possible. There can be other interpretations that would be fully supported by the text of the provision. There can be other interpretations which will not require that this court make generalizations and surmises. At best, therefore, the universal qualifier for the use of Unprogrammed Funds may just be one interpretation; but, it is not the only one. The text of this statutory provision can also be reasonably interpreted as allowing expenditures for the purposes enumerated when it can be shown that the actual revenue collection ***in an income source exceeds the target for that source*** as submitted by the President in his National Expenditure Program. There is no need to show that the ***total*** revenue collection exceeds the ***total*** revenue targets. This alternative interpretation, apart from being plainly supported by the text, is also reasonable to achieve discernable state interests.

DEL CASTILLO, *J., concurring and dissenting opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; SUSPENSION OF EXPENDITURE OF APPROPRIATIONS; THE PRESIDENT HAS THE POWER TO FINALLY DISCONTINUE SLOW-MOVING PROJECTS WHICH WAS IMPLIEDLY EXERCISED WHEN HE ORDERED THE WITHDRAWAL OF UNOBLIGATED ALLOTMENTS FROM SLOW MOVING PROJECTS AND WITH THE FINAL DISCONTINUANCE OF SLOW-MOVING PROJECTS, SAVINGS WERE GENERATED.—** [T]he President has the power to finally discontinue slow-moving projects pursuant to (1) Section 38, Chapter 5, Book VI, of the Administrative Code and (2) the General Appropriations Act (GAA) definition of "savings," which implicitly recognizes the power to finally discontinue or abandon a work, activity or purpose. This power was impliedly exercised by the President, under National Budget Circular No. (NBC) 541, by ordering the withdrawal of

unobligated allotments from slow-moving projects in order to spur economic growth. Absent proof to the contrary and the undisputed claim that this program, indeed, led to economic growth, the "public interest" standard, which circumscribes the power to permanently stop expenditure under Section 38, must be deemed satisfied. Hence, with the final discontinuance of slow-moving projects, "savings" were thereby generated, pursuant to the GAA definition of savings.

2. ID.; ID.; ID.; ID.; THE WITHDRAWAL OF UNOBLIGATED ALLOTMENTS FROM SLOW-MOVING PROJECTS WHICH WERE NOT FINALLY DISCONTINUED OR ABANDONED AND THE USE OF THE SUCH WITHDRAWN UNOBLIGATED ALLOTMENTS AS SAVINGS ARE UNCONSTITUTIONAL AND ILLEGAL.— [B]ecause the wording of NBC 541 is so broad, the amount of withdrawn allotments that may be reissued or ploughed back to the same project may be: (1) zero, (2) the same amount as the unobligated allotment previously withdrawn in that project, (3) more than the amount of the unobligated allotment previously withdrawn in that project, and (4) less than the amount of the unobligated allotment previously withdrawn in that project. In scenario 4, a constitutional breach would be present because the project would effectively not be finally discontinued but its withdrawn allotment would be treated as "savings." I now further clarify that when I stated that the "project would effectively not be finally discontinued" under scenario 4, I speak about the **net effect** of the operation of NBC 541. It should be noted that the withdrawal of the unobligated allotments as well as the reissuance or realignment, as the case may be, of the aforesaid allotments were done on a quarterly basis. Thus, the net effect of the operation of NBC 541 can only be determined after the period of its implementation. This is the reason why an in-depth or intensive factual determination is necessary prior to a declaration that scenario 4 occurred and, thus, breached the statutory definition of "savings" under the pertinent GAAs. Stated another way, it is equally possible that the net effect of the operation of NBC 541 would not result to the breach of the statutory definition of "savings." It depends on the pivotal issue of whether the project, from which the unobligated allotments were withdrawn, was finally discontinued or abandoned; a matter which must be established and determined

in a proper case. As I discussed in my July 1, 2014 Opinion, this ambiguity, in determining when a project is finally discontinued or abandoned, is a weak point of the GAAs which opens the doors to abuse x x x. In sum, I maintain that Sections 5.4, 5.5 and 5.7 of NBC 541 are only partially unconstitutional and illegal insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects, which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as "savings."

3. **ID.; LEGISLATIVE DEPARTMENT; PROHIBITION AGAINST TRANSFERS AND AUGMENTATION OF FUNDS; POWER OF AUGMENTATION; TRANSFER OF WITHDRAWN ALLOTMENTS TO NON-EXISTENT PROGRAMS AND PROJECTS IN THE GENERAL APPROPRIATIONS ACT IS VOID.—** "[T]o fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year" in Section 5.7.3 of NBC 541 is void insofar as it allows the transfer of the withdrawn allotments to non-existent programs and projects in the 2012 GAA. This violates Article VI, Section 29(1) of the Constitution and Section 54 of the 2012 GAA. However, it is premature, at this time, to conclude that, indeed, such transfer of savings to non-existent programs or projects did occur under the DAP on due process grounds.

4. **ID.; ID.; ID.; THE PROHIBITION ON CROSS-BORDER TRANSFER OF SAVINGS APPLIES TO ALL THE BRANCHES OF GOVERNMENT AND CONSTITUTIONAL BODIES.—** [Article VI, Section 25(5) of the Constitution] is clear, absolute and categorical. If we allow the relaxation of this rule, to occasionally address certain exigencies, it will open the doors to abuse and defeat the laudable purposes of this provision that is an integral component of the system of checks and balances under our plan of government. Again, the proper recourse is for the other departments and constitutional bodies to request for additional funds through a supplemental budget duly passed and scrutinized by Congress. x x x The prohibition on cross-border transfer of savings applies to all the branches of government and constitutional bodies, including the Court. If the Solicitor General thinks that the aforesaid transfer of funds involving the Court violates the subject constitutional provision, then the proper recourse is to have

them declared unconstitutional, as was done in this case. But, certainly, it cannot change the clear and unequivocal language of the constitutional prohibition on cross-border transfer of savings. In fine, if cross-border transfer of savings has, indeed, been a long-standing practice of the whole government bureaucracy, then the Court's ruling in this case should be a clear signal to put an end to this unconstitutional practice. Long-standing practices cannot justify or legitimize a continuing violation of the Constitution.

5. **ID.; ID.; GENERAL APPROPRIATIONS ACT; UNPROGRAMMED FUND; THE PHRASE "WHEN THE REVENUE COLLECTIONS EXCEED THE ORIGINAL REVENUE TARGETS" SHOULD BE CONSTRUED AS MERELY REQUIRING THAT REVENUE COLLECTIONS FROM EACH SOURCE OF REVENUE ENUMERATED IN THE BUDGET PROPOSAL MUST EXCEED THE CORRESPONDING REVENUE TARGET.—** In my July 1, 2014 Opinion, I joined the majority in interpreting the phrase "when the revenue collections exceed the original revenue targets" as pertaining to the actual *total* revenue collections *vis-à-vis* original *total* revenue targets so much so that this provision would trigger the release of the Unprogrammed Fund only when there is a budget surplus, which, as correctly pointed out by the Solicitor General, would render useless the billions of pesos appropriated by Congress under the Unprogrammed Fund because we can take judicial notice that the government operates under a budget deficit. The phrase also could have been specifically worded as using the term "total" if the purpose was, indeed, to refer to the aggregate actual revenue collections *vis-à-vis* the aggregate original revenue targets. Although I note that these arguments are being raised for the first time by the Solicitor General, I find the same to be correct based on the familiar rule of statutory construction according great respect to the interpretation by officers entrusted with the administration of the law subject of judicial scrutiny. Because the law is ambiguous, as even the majority concedes, and, thus, susceptible to two interpretations, there is no obstacle to adopting the interpretation of those who were closely involved in the crafting of the law, for their interpretation is solidly founded on the wording of the law and the practical realities of its operation. It should not be forgotten that the Executive

Department proposed the budget, including the provisions on the Unprogrammed Fund of the pertinent GAAs. Further, that this interpretation may result to budgetary deficit spending goes into the wisdom and policy of the law, which the Court cannot overturn in the guise of statutory construction. I, therefore, modify my position in my July 1, 2014 Opinion and agree with the Solicitor General that the phrase "when the revenue collections exceed the original revenue targets" should be construed as merely requiring "that revenue collections from each source of revenue enumerated in the budget proposal must exceed the corresponding revenue target." x x x If, indeed, a surplus budget policy is the overriding principle governing the Unprogrammed Fund, then Congress would not have authorized the release of the Unprogrammed Fund from (1) collections arising from sources not considered in the original revenue targets, (2) newly approved loans for foreign-assisted projects, and (3) savings from programmed appropriations subject to certain conditions insofar as the 2011 GAA, ***instead***, Congress should have specifically provided that the aforesaid sources of funds should be ***first*** used to cover any deficit in the entire budget before being utilized for unprogrammed appropriations. x x x The same reasoning may be applied to x x x [the special provision of the Unprogrammed Fund under 2011, 2012 and 2013 GAAs on use of excess income]. Again, if a surplus budget policy was clearly and absolutely intended by Congress, then it would not have authorized the release of excess income, by the concerned agencies, for the purpose of "General Fund Adjustments" under the Unprogrammed Fund without specifically providing that such excess income be ***first*** utilized to cover any deficit in the entire budget before applying the same to the unprogrammed appropriations. x x x In sum, given the ambiguity of the subject phrase, the doubt should be resolved in favor of the interpretation of those who are entrusted with the administration of the law and who were closely involved in its enactment. The Court should not allow itself to be entangled with policy-making under the guise of statutory construction.

6. ID.; ID.; ID.; ID.; THE BASIS OF THE ORIGINAL REVENUE TARGETS UNDER THE UNPROGRAMMED FUND IS THE BUDGET OF EXPENDITURES AND SOURCES OF FINANCING SUBMITTED BY THE PRESIDENT TO CONGRESS.— The 2011, 2012 and 2013 GAA provisions

on the Unprogrammed Fund uniformly provide that the release therefrom shall be authorized when "the revenue collections exceed the original revenue targets **submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution.**" x x x The law is clear. The basis of the "original revenue targets" under the Unprogrammed Fund is the budget of expenditures and sources of financing submitted by the President to Congress. This is commonly known as the Budget for Expenditures and Sources of Financing (BESF). x x x Revenue targets are normally adjusted downward due to developments in the economy as well as other internal and external factors. This appears to be the reason why the law uses the term "original" to qualify the phrase "revenue targets" under the Unprogrammed Fund. That is, the law recognizes that the government may adjust revenue targets downward during the course of budget execution due to unforeseen developments. By providing that the "original" revenue targets under the BESF shall be made the bases for the release of the Unprogrammed Fund, the Executive Department is, thus, prevented or precluded from "abusing" the Unprogrammed Fund by maneuvering increased releases therefrom through the downward adjustment of the revenue targets during the course of budget execution. Hence, I find that the "original" revenue targets in the BESF are the proper bases for the release of the Unprogrammed Fund, by virtue of the clear provisions of the pertinent GAAs, and not the revenue targets set by the DBCC.

7. **ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOCTRINE OF OPERATIVE FACT; APPLIES ONLY TO THE CROSS-BORDER TRANSFERS OF SAVINGS ACTUALLY PROVEN IN THE CASE AT BAR.—** The majority now clarifies that its statement that "the doctrine of operative fact x x x cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities" does not do away with the presumption of good faith, the presumption of innocence and the presumption of regularity in the performance of official duties. I am in accord with this clarification. Finally, I reiterate that the operative fact doctrine applies only to the cross-border transfers of savings actually proven in this case, *i.e.*, the admitted cross-border transfers

of savings from the Executive Department to the Commission on Audit, House of Representatives and Commission on Elections, respectively. Any ruling as to its applicability to the other DAP-funded projects is premature in view of the lack of sufficient proof, litigated in a proper case, that they were implemented in violation of the Constitution.

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Harry L. Roque, Jr., Joel Ruiz Butuyan and Roger R. Rayel for petitioners in G.R. No. 209442.
Remigio D. Saladero, Jr., Noel V. Neri and Vicente Jaime M. Topacio for petitioners in G.R. No. 209517.

R E S O L U T I O N

BERSAMIN, *J.*:

The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.[1]

Before the Court are the Motion for Reconsideration[2] filed by the respondents, and the Motion for Partial Reconsideration[3] filed by the petitioners in G.R. No. 209442.

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[1] *Biraogo v. Philippine Truth Commission of 2010,* G.R. No. 192935 and 193036, December 7, 2010, 637 SCRA 78, 177.

[2] *Rollo* (G.R. No. 209287), pp. 1431-1482.

[3] *Id.* at 1496-1520.

In their Motion for Reconsideration, the respondents assail the decision[4] promulgated on July 1, 2014 upon the following procedural and substantive errors, *viz*:

PROCEDURAL

I

WITHOUT AN ACTUAL CASE OR CONTROVERSY, ALLEGATIONS OF GRAVE ABUSE OF DISCRETION ON THE PART OF ANY INSTRUMENTALITY OF THE GOVERNMENT CANNOT CONFER ON THIS HONORABLE COURT THE POWER TO DETERMINE THE CONSTITUTIONALITY OF THE DAP AND NBC NO. 541

II

PETITIONERS' ACTIONS DO NOT PRESENT AN ACTUAL CASE OR CONTROVERSY AND THEREFORE THIS HONORABLE COURT DID NOT ACQUIRE JURISDICTION

III

PETITIONERS HAVE NEITHER BEEN INJURED NOR THREATENED WITH INJURY AS A RESULT OF THE OPERATION OF THE DAP AND THEREFORE SHOULD HAVE BEEN HELD TO HAVE NO STANDING TO BRING THESE SUITS FOR CERTIORARI AND PROHIBITION

IV

NOR CAN PETITIONERS' STANDING BE SUSTAINED ON THE GROUND THAT THEY ARE BRINGING THESE SUITS AS CITIZENS AND AS TAXPAYERS

V

THE DECISION OF THIS HONORABLE COURT IS NOT BASED ON A CONSIDERATION OF THE ACTUAL APPLICATIONS OF THE DAP IN 116 CASES BUT SOLELY ON AN ABSTRACT CONSIDERATION OF NBC NO. 5415[5]

SUBSTANTIVE

I

THE EXECUTIVE DEPARTMENT PROPERLY INTERPRETED "SAVINGS" UNDER THE RELEVANT PROVISIONS OF THE GAA

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[4] *Id.* at 1135-1241.

[5] *Id.* at 1434-1435.

II

ALL DAP APPLICATIONS HAVE APPROPRIATION COVER

III

THE PRESIDENT HAS AUTHORITY TO TRANSFER SAVINGS TO OTHER DEPARTMENTS PURSUANT TO HIS CONSTITUTIONAL POWERS

IV

THE 2011, 2012 AND 2013 GAAS ONLY REQUIRE THAT REVENUE COLLECTIONS FROM EACH SOURCE OF REVENUE ENUMERATED IN THE BUDGET PROPOSAL MUST EXCEED THE CORRESPONDING REVENUE TARGET

V

THE OPERATIVE FACT DOCTRINE WAS WRONGLY APPLIED[6]

The respondents maintain that the issues in these consolidated cases were mischaracterized and unnecessarily constitutionalized; that the Court's interpretation of *savings* can be overturned by legislation considering that savings is defined in the General Appropriations Act (GAA), hence making savings a statutory issue;[7] that the withdrawn unobligated allotments and unreleased appropriations constitute savings and may be used for augmentation;[8] and that the Court should apply legally recognized norms and principles, most especially the presumption of good faith, in resolving their motion.[9]

On their part, the petitioners in G.R. No. 209442 pray for the partial reconsideration of the decision on the ground that the Court thereby:

FAILED TO DECLARE AS UNCONSTITUTIONAL AND ILLEGAL ALL MONEYS UNDER THE DISBURSEMENT ACCELERATION PROGRAM (DAP) USED FOR ALLEGED AUGMENTATION OF APPROPRIATION ITEMS THAT DID NOT HAVE ACTUAL DEFICIENCIES[10]

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[6] *Id.*

[7] *Id.* at 1435-1438.

[8] *Id.* 1444-1449.

[9] *Id.* at 1432.

[10] *Id.* at 1496.

They submit that augmentation of items beyond the maximum amounts recommended by the President for the programs, activities and projects (PAPs) contained in the budget submitted to Congress should be declared unconstitutional.

Ruling of the Court

We deny the motion for reconsideration of the petitioners in G.R. No. 209442, and partially grant the motion for reconsideration of the respondents.

The procedural challenges raised by the respondents, being a mere rehash of their earlier arguments herein, are dismissed for being already passed upon in the assailed decision.

As to the substantive challenges, the Court discerns that the grounds are also reiterations of the arguments that were already thoroughly discussed and passed upon in the assailed decision. However, certain declarations in our July 1, 2014 Decision are modified in order to clarify certain matters and dispel further uncertainty.

1.
The Court's power of judicial review

The respondents argue that the Executive has not violated the GAA because *savings* as a concept is an ordinary species of interpretation that calls for legislative, instead of judicial, determination.[11]

This argument cannot stand.

The consolidated petitions distinctly raised the question of the constitutionality of the acts and practices under the DAP, particularly their non-conformity with Section 25(5), Article VI of the Constitution and the principles of separation of power and equal protection. Hence, the matter is still entirely within the Court's competence, and its determination does not pertain to Congress to the exclusion of the Court. Indeed, the interpretation of the GAA and its definition of *savings* is a foremost judicial function. This is because the power of judicial

[11] *Id.* at 1435.

review vested in the Court is exclusive. As clarified in *Endencia and Jugo v. David*:[12]

Under our system of constitutional government, the Legislative department is assigned the power to make and enact laws. The Executive department is charged with the execution of carrying out of the provisions of said laws. **But the interpretation and application of said laws belong exclusively to the Judicial department. And this authority to interpret and apply the laws extends to the Constitution. Before the courts can determine whether a law is constitutional or not, it will have to interpret and ascertain the meaning not only of said law, but also of the pertinent portion of the Constitution in order to decide whether there is a conflict between the two, because if there is, then the law will have to give way and has to be declared invalid and unconstitutional**.

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We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the Legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertain its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental, principles of our constitutional system of government, particularly those governing the separation powers.[13]

The respondents cannot also ignore the glaring fact that the petitions primarily and significantly alleged grave abuse of discretion on the part of the Executive in the implementation of the DAP. The resolution of the petition thus demanded the exercise by

[12] Nos. L-6355-56, 93 Phil. 696 (1953).

[13] *Id.* at 700-702 (bold underscoring is supplied for emphasis).

the Court of its aforedescribed power of judicial review as mandated by the Constitution

2.

Strict construction on the accumulation and utilization of savings

The decision of the Court has underscored that the exercise of the power to augment shall be strictly construed by virtue of its being an exception to the general rule that the funding of PAPs shall be limited to the amount fixed by Congress for the purpose.[14] Necessarily, savings, their utilization and their management will also be strictly construed against expanding the scope of the power to augment.[15] Such a strict interpretation is essential in order to keep the Executive and other budget implementors within the limits of their prerogatives during budget execution, and to prevent them from unduly transgressing Congress' power of the purse.[16] Hence, regardless of the perceived beneficial purposes of the DAP, and regardless of whether the DAP is viewed as an effective tool of stimulating the national economy, the acts and practices under the DAP and the relevant provisions of NBC No. 541 cited in the Decision should remain illegal and unconstitutional as long as the funds used to finance the projects mentioned therein are sourced from savings that deviated from the relevant provisions of the GAA, as well as the limitation on the power to augment under Section 25(5), Article VI of the Constitution. In a society governed by laws, even the best intentions must come within the parameters defined and set by the Constitution and the law. Laudable purposes must be carried out through legal methods.[17]

Respondents contend, however, that withdrawn unobligated allotments and unreleased appropriations under the DAP are savings that may be used for augmentation, and that the

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[14] *Rollo* (G.R. No. 209287), pp. 1203-1204.

[15] *Id.* at 1208.

[16] *Id.*

[17] *Brillantes, Jr. v. Commission on Elections,* G.R. No. 163193, June 15, 2004, 432 SCRA 269, 307.

withdrawal of unobligated allotments were made pursuant to Section 38 Chapter 5, Book VI of the Administrative Code;[18] that Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code are consistent with Section 25(5), Article VI of the Constitution, which, taken together, constitute "a framework for which economic managers of the nation may pull various levers in the form of authorization from Congress to efficiently steer the economy towards the specific and general purposes of the GAA";[19] and that the President's augmentation of deficient items is in accordance with the standing authority issued by Congress through Section 39.

Section 25(5), Article VI of the Constitution states:

Section 25. x x x

x x x x x x x x x

5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

x x x x x x x x x

Section 38 and Section 39, Chapter 5, Book VI of the Administrative Code provide:

Section 38. *Suspension of Expenditure of Appropriations*. - Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.

Section 39. *Authority to Use Savings in Appropriations to Cover Deficits*.—Except as otherwise provided in the General

[18] *Supra* note 7, at 1448.

[19] *Id.* at 1449.

Appropriations Act, **any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations**: Provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law: Provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned. (Bold underscoring supplied for emphasis)

In the Decision, we said that:

Unobligated allotments, on the other hand, were encompassed by the first part of the definition of "savings" in the GAA, that is, as "portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance." But the first part of the definition was further qualified by the three enumerated instances of when savings would be realized. As such, unobligated allotments could not be indiscriminately declared as savings without first determining whether any of the three instances existed. This signified that the DBM's withdrawal of unobligated allotments had disregarded the definition of savings under the GAAs.

x x x x x x x x x

The respondents rely on Section 38, Chapter 5, Book VI of the *Administrative Code of 1987* to justify the withdrawal of unobligated allotments. But the provision authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments, to wit:

x x x x x x x x x

Moreover, the DBM did not suspend or stop further expenditures in accordance with Section 38, *supra*, but instead transferred the funds to other PAPs.[20]

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[20] Decision, pp. 60-67.

We now clarify.

Section 38 refers to the authority of the President "to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act." When the President suspends or stops expenditure of funds, savings are not automatically generated until it has been established that such funds or appropriations are free from any obligation or encumbrance, and that the work, activity or purpose for which the appropriation is authorized has been completed, discontinued or abandoned.

It is necessary to reiterate that under Section 5.7 of NBC No. 541, the withdrawn unobligated allotments may be:

> 5.7.1 Reissued for the original programs and projects of the agencies/OUs concerned, from which the allotments were withdrawn;
>
> 5.7.2 Realigned to cover additional funding for other existing programs and projects of the agency/OU; or
>
> 5.7.3 Used to augment existing programs and projects of any agency and to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year.

Although the withdrawal of unobligated allotments may have effectively resulted in the suspension or stoppage of expenditures through the issuance of negative Special Allotment Release Orders (SARO), the reissuance of withdrawn allotments to the original programs and projects is a clear indication that the program or project from which the allotments were withdrawn has not been discontinued or abandoned. Consequently, as we have pointed out in the Decision, "the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible."[21] In this regard, the withdrawal and transfer of unobligated allotments remain unconstitutional. But then, whether the withdrawn allotments have actually been reissued to their

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[21] *Id.* at 62.

original programs or projects is a factual matter determinable by the proper tribunal.

Also, withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid.

At this point, it is likewise important to underscore that the reversion to the General Fund of unexpended balances of appropriations – savings included – pursuant to Section 28 Chapter IV, Book VI of the *Administrative Code*[22] does not apply to the Constitutional Fiscal Autonomy Group (CFAG), which include the Judiciary, Civil Service Commission, Commission on Audit, Commission on Elections, Commission on Human Rights, and the Office of the Ombudsman. The reason for this is that the fiscal autonomy enjoyed by the CFAG –

> x x x contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative

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[22] *Id.* at 67.

not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. x x x[23]

On the other hand, Section 39 is evidently in conflict with the plain text of Section 25(5), Article VI of the Constitution because it allows the President to approve the use of *any* savings in the regular appropriations authorized in the GAA for programs and projects of *any* department, office or agency to cover a deficit in *any* other item of the regular appropriations. As such, Section 39 violates the mandate of Section 25(5) because the latter expressly limits the authority of the President to augment an item in the GAA to only those in his own Department out of the savings in other items of his own Department's appropriations. Accordingly, Section 39 cannot serve as a valid authority to justify cross-border transfers under the DAP. Augmentations under the DAP which are made by the Executive within its department shall, however, remain valid so long as the requisites under Section 25(5) are complied with.

In this connection, the respondents must always be reminded that the Constitution is the basic law to which all laws must conform. No act that conflicts with the Constitution can be valid.[24] In *Mutuc v. Commission on Elections*,[25] therefore, we have emphasized the importance of recognizing and bowing to the supremacy of the Constitution:

> x x x The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is [sic]

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[23] *Bengzon v. Drilon,* G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[24] *Social Justice Society (SJS) v. Dangerous Drugs Board,* G.R. Nos. 157870, 158633 and 161658, November 3, 2008, 570 SCRA 410, 422-423.

[25] No. L-32717, November 26, 1970, 36 SCRA 228, 234-235.

entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.

Also, in *Biraogo v. Philippine Truth Commission of 2010*,[26] we have reminded that: –

> The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it.[27]

3.
The power to augment cannot be used to fund non-existent provisions in the GAA

The respondents posit that the Court has erroneously invalidated all the DAP-funded projects by overlooking the difference between an item and an allotment class, and by concluding that they do not have appropriation cover; and that such error may induce Congress and the Executive (through

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[26] G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78.

[27] *Id.* at 137-138.

the DBM) to ensure that all items should have at least ₱1 funding in order to allow augmentation by the President.[28]

At the outset, we allay the respondents' apprehension regarding the validity of the DAP funded projects. It is to be emphatically indicated that the Decision did not declare the *en masse* invalidation of the 116 DAP-funded projects. To be sure, the Court recognized the encouraging effects of the DAP on the country's economy,[29] and acknowledged its laudable purposes, most especially those directed towards infrastructure development and efficient delivery of basic social services.[30] It bears repeating that the DAP is a policy instrument that the Executive, by its own prerogative, may utilize to spur economic growth and development.

Nonetheless, the Decision did find doubtful those projects that appeared to have no appropriation cover under the relevant GAAs on the basis that: (1) the DAP funded projects that originally did not contain any appropriation for some of the expense categories (personnel, MOOE and capital outlay); and (2) the appropriation code and the particulars appearing in the SARO did not correspond with the program specified in the GAA.

The respondents assert, however, that there is no constitutional requirement for Congress to create allotment classes within an item. What is required is for Congress to create items to comply with the line-item veto of the President.[31]

After a careful reexamination of existing laws and jurisprudence, we find merit in the respondents' argument.

Indeed, Section 25(5) of the 1987 Constitution mentions of the term *item* that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*,[32] we said that an item that is the distinct

[28] *Supra* note 7, at 1450-1451.

[29] Decision, p. 36.

[30] *Id.* at 90.

[31] Respondents' Motion for Reconsideration, p. 21.

[32] G.R. No. 208566, November 19, 2013, 710 SCRA 1.

and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions, thus:

> For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*, the US Supreme Court characterized an item of appropriation as follows:
>
>> An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. (Emphases supplied)
>
> On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.
>
> Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item." This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a specific purpose, would then be considered as "line-item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.,* MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary

funds would equally square with the constitutional mechanism of item-veto for as long as they follow the rule on singular correspondence as herein discussed. x x x (Emphasis supplied)[33]

Accordingly, the *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.

Further, in *Nazareth v. Villar*,[34] we clarified that there must be an existing item, project or activity, purpose or object of expenditure with an appropriation to which savings may be transferred for the purpose of augmentation. Accordingly, so long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. This interpretation is consistent not only with the Constitution and the GAAs, but also with the degree of flexibility allowed to the Executive during budget execution in responding to unforeseeable contingencies.

Nonetheless, this modified interpretation does not take away the caveat that only DAP projects found in the appropriate GAAs may be the subject of augmentation by legally accumulated savings. Whether or not the 116 DAP-funded projects had appropriation cover and were validly augmented require factual determination that is not within the scope of the present consolidated petitions under Rule 65.

4.
Cross-border transfers are constitutionally impermissible

The respondents assail the pronouncement of unconstitutionality of cross-border transfers made by the President. They submit

[33] *Id.* at 126-127.

[34] G.R. No. 188635, January 29, 2013, 689 SCRA 385.

that Section 25(5), Article VI of the Constitution prohibits only the transfer of appropriation, not savings. They relate that cross-border transfers have been the practice in the past, being consistent with the President's role as the Chief Executive.[35]

In view of the clarity of the text of Section 25(5), however, the Court stands by its pronouncement, and will not brook any strained interpretations.

5.
Unprogrammed funds may only be released upon proof that the total revenues exceeded the target

Based on the 2011, 2012 and 2013 GAAs, the respondents contend that each source of revenue in the budget proposal must exceed the respective target to authorize release of unprogrammed funds. Accordingly, the Court's ruling thereon nullified the intention of the authors of the unprogrammed fund, and renders useless the special provisions in the relevant GAAs.[36]

The respondents' contentions are without merit.

To recall, the respondents justified the use of unprogrammed funds by submitting certifications from the Bureau of Treasury and the Department of Finance (DOF) regarding the dividends derived from the shares of stock held by the Government in government-owned and controlled corporations.[37] In the decision, the Court has held that the requirement under the relevant GAAs should be construed in light of the purpose for which the unprogrammed funds were denominated as "standby appropriations." Hence, revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents' position could be unsound fiscal management for disregarding

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[35] *Supra* note 7, at 1455-1459.

[36] *Id.* at 1459-1465.

[37] *Rollo* (G.R. No. 209155), pp. 327, 337-339.

the budget plan and fostering budget deficits, contrary to the Government's surplus budget policy.[38]

While we maintain the position that aggregate revenue collection must first exceed aggregate revenue target as a pre-requisite to the use of unprogrammed funds, we clarify the respondents' notion that the release of unprogrammed funds may only occur at the end of the fiscal year.

There must be consistent monitoring as a component of the budget accountability phase of every agency's performance in terms of the agency's budget utilization as provided in Book VI, Chapter 6, Section 51 and Section 52 of the *Administrative Code of 1987*, which state:

SECTION 51. Evaluation of Agency Performance.—The President, through the Secretary shall evaluate on a continuing basis the quantitative and qualitative measures of agency performance as reflected in the units of work measurement and other indicators of agency performance, including the standard and actual costs per unit of work.

SECTION 52. Budget Monitoring and Information System.—The Secretary of Budget shall determine accounting and other items of information, financial or otherwise, needed to monitor budget performance and to assess effectiveness of agencies' operations and shall prescribe the forms, schedule of submission, and other components of reporting systems, including the maintenance of subsidiary and other records which will enable agencies to accomplish and submit said information requirements: Provided, that the Commission on Audit shall, in coordination with the Secretary of Budget, issue rules and regulations that may be applicable when the reporting requirements affect accounting functions of agencies: Provided, further, that the applicable rules and regulations shall be issued by the Commission on Audit within a period of thirty (30) days after the Department of Budget and Management prescribes the reporting requirements.

Pursuant to the foregoing, the Department of Budget and Management (DBM) and the Commission on Audit (COA) require

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[38] *Supra* note 14, at 1231-1232.

agencies under various joint circulars to submit budget and financial accountability reports (BFAR) on a regular basis,[39] one of which is the Quarterly Report of Income or Quarterly Report of Revenue and Other Receipts.[40] On the other hand, as Justice Carpio points out in his Separate Opinion, the Development Budget Coordination Committee (DBCC) sets quarterly revenue targets for a specific fiscal year.[41] Since information on both actual revenue collections and targets are made available every quarter, or at such time as the DBM may prescribe, actual revenue surplus may be determined accordingly and releases from the unprogrammed fund may take place even prior to the end of the fiscal year.[42]

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[39] *http://budgetngbayan.com/budget-101/budget-accountability/#BAR* (Visited on January 28, 2015).

[40] See also the DBM and COA's Joint Circular No. 2013-1, March 15, 2013 and Joint Circular No. 2014-1, July 2, 2014.

[41] *J.* Carpio, Separate Opinion, p. 11.

[42] In this regard, the ninth and tenth special provisions for unprogrammed funds in the 2011 GAA also provide the following:

9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus, offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E. O. No. 292, s. 1987:

x x x x x x x x x

Implementation of this section shall be subject to guidelines to be issued by the DBM.

10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said

In fact, the eleventh special provision for unprogrammed funds in the 2011 GAA requires the DBM to submit quarterly reports stating the details of the use and releases from the unprogrammed funds, *viz*:

11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

Similar provisions are contained in the 2012 and 2013 GAAs.[43]

However, the Court's construction of the provision on unprogrammed funds is a statutory, not a constitutional, interpretation of an ambiguous phrase. Thus, the construction should be given prospective effect.[44]

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income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines jointly issued by the DBM and DOF

The 2012 and 2013 GAAs also contain similar provisions.

[43] 2012 GAA provides:

8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, agencies or offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

2013 GAA reads:

8. Reportorial Requirement. The DBM shall submit, either in printed form or by way of electronic document, to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and the purposes thereof, and the recipient departments, bureaus, and offices, including GOCCs and GFIs, as well as the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.

[44] *Commission of Internal Revenue v. San Roque Power Corporation,* G.R. Nos. 187485, 196113 and 197156, 690 SCRA 336.

6.
The presumption of good faith stands despite the obiter pronouncement

The remaining concern involves the application of the operative fact doctrine.

The respondents decry the misapplication of the operative fact doctrine, stating:

110. **The doctrine of operative fact has nothing to do with the potential liability of persons who acted pursuant to a then-constitutional statute, order, or practice. They are presumed to have acted in good faith and the court cannot load the dice, so to speak, by disabling possible defenses in potential suits against so-called "authors, proponents and implementors."** The mere nullification are still deemed valid on the theory that judicial nullification is a contingent or unforeseen event.

111. The cases before us are about the statutory and constitutional interpretations of so-called acts and practices under a government program, DAP. These are not civil, administrative, or criminal actions against the public officials responsible for DAP, and any statement about bad faith may be unfairly and maliciously exploited for political ends. At the same time, **any negation of the presumption of good faith, which is the unfortunate implication of paragraphs 3 and 4 of page 90 of the Decision, violates the constitutional presumption of innocence, and is inconsistent with the Honorable Court's recognition that "the implementation of the DAP yielded undeniably positive results that enhanced the economic welfare of the country."**

112. The policy behind the operative fact doctrine is consistent with the idea that **regardless of the nullification of certain acts and practices under the DAP and/or NBC No. 541, it does not operate to impute bad faith to authors, proponents and implementors who continue to enjoy the presumption of innocence and regularity in the performance of official functions and duties. Good faith is presumed, whereas bad faith requires the existence of facts. To hold otherwise would send a chilling effect to all public officers whether of minimal or significant**

discretion, the result of which would be a dangerous paralysis of bureaucratic activity.[45] (Emphasis supplied)

In the speech he delivered on July 14, 2014, President Aquino III also expressed the view that in applying the doctrine of operative fact, the Court has already presumed the absence of good faith on the part of the authors, proponents and implementors of the DAP, so that they would have to prove good faith during trial.[46]

Hence, in their Motion for Reconsideration, the respondents now urge that the Court should extend the presumption of good faith in favor of the President and his officials who co-authored, proposed or implemented the DAP.[47]

The paragraphs 3 and 4 of page 90 of the Decision alluded to by the respondents read:

Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

In that context, as Justice Brion has clarified, **the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities**.[48] (Bold underscoring is supplied)

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[45] *Supra* note 7, at 1466-1467.

[46] http://www.gov.ph/2014/07/14/english-national-address-of-president-aquino-on-the-supreme-courts-decision-on-dap/ Last visited on November 13, 2014.

[47] *Supra* note 7, at 1432.

[48] *Supra* note 14, at 1239.

The quoted text of paragraphs 3 and 4 shows that the Court has neither thrown out the presumption of good faith nor imputed bad faith to the authors, proponents and implementors of the DAP. The contrary is true, because the Court has still presumed their good faith by pointing out that "the doctrine of operative fact x x x cannot apply to the authors, proponents and implementors of the DAP, *unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities*." Note that the proper tribunals can make "*concrete findings of good faith in their favor*" only after a full hearing of *all* the parties in any given case, and such a hearing can begin to proceed only after according all the presumptions, particularly that of good faith, by initially requiring the complainants, plaintiffs or accusers to first establish their complaints or charges before the respondent authors, proponents and implementors of the DAP.

It is equally important to stress that the ascertainment of good faith, or the lack of it, and the determination of whether or not due diligence and prudence were exercised, are questions of fact.[49] The want of good faith is thus better determined by tribunals other than this Court, which is not a trier of facts.[50]

For sure, the Court cannot jettison the presumption of good faith in this or in any other case. The presumption is a matter of law. It has had a long history. Indeed, good faith has long been established as a legal principle even in the heydays of the Roman Empire.[51] In *Soriano v. Marcelo*,[52] citing *Collantes v. Marcelo*,[53] the Court emphasizes the necessity of the presumption of good faith, thus:

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[49] *Philippine National Bank v. Heirs of Estanislao Militar,* G.R. No. 164801 and 165165, June 30, 2006, 494 SCRA 308, 319.

[50] *Id.*

[51] See *Good Faith in European Contract Law,* R. Zimmermann, S. Whittaker, eds., Cambridge University Press, 2000, p. 16; http://catdir.loc.gov/catdir/samples/cam032/99037679.pdf (Visited on November 24, 2014).

[52] G.R. No. 160772, July 13, 2009, 592 SCRA 394.

[53] G.R. Nos. 167006-07, 14 August 2007, 530 SCRA 142.

Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith which springs from the fountain of good conscience. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

The law also requires that the public officer's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x

The Court has further explained in *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*:[54]

We do not doubt the existence of the presumptions of "good faith" or "regular performance of official duty", yet these presumptions are disputable and may be contradicted and overcome by other evidence. Many civil actions are oriented towards overcoming any number of these presumptions, and a cause of action can certainly be geared towards such effect. The very purpose of trial is to allow a party to present evidence to overcome the disputable presumptions involved. Otherwise, if trial is deemed irrelevant or unnecessary, owing to the perceived indisputability of the presumptions, the judicial exercise would be relegated to a mere ascertainment of what presumptions apply in a given case, nothing more. Consequently, the entire Rules of Court is rendered as excess verbiage, save perhaps for the provisions laying down the legal presumptions.

Relevantly, the authors, proponents and implementors of the DAP, being public officers, further enjoy the presumption of regularity in the performance of their functions. This presumption is necessary because they are clothed with some part of the

[54] G.R. No. 142362, May 3, 2006, 489 SCRA 22.

sovereignty of the State, and because they act in the interest of the public as required by law.[55] However, the presumption may be disputed.[56]

At any rate, the Court has agreed during its deliberations to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact. This is because they had nothing to do at all with the adoption of the invalid acts and practices.

7.
The PAPs under the DAP remain effective under the operative fact doctrine

As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply.[57] In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions[58] worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

IN VIEW OF THE FOREGOING, and **SUBJECT TO THE FOREGOING CLARIFICATIONS,** the Court **PARTIALLY GRANTS** the Motion for Reconsideration filed by the respondents, and **DENIES** the Motion for Partial Reconsideration filed by the petitioners in G.R. No. 209442 for lack of merit.

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[55] Words And Phrases, Vol. 35, p. 356, citing *Bender v. Cushing,* 14 Ohio Dec. 65, 70.

[56] Section 3(l), Rule 131, *Rules of Court.*

[57] *Id.*

[58] *http://www.gov.ph/2014/07/24/dap-presentation-of-secretary-abad-to-the-senate-of-the-philippines/* (November 27, 2014)

ACCORDINGLY, the dispositive portion of the Decision promulgated on July 1, 2014 is hereby **MODIFIED** as follows:

> **WHEREFORE,** the Court **PARTIALLY GRANTS** the petitions for *certiorari* and prohibition; and **DECLARES** the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances **UNCONSTITUTIONAL** for being in violation of Section 25(5), Article VI of the 1987 Constitution and the doctrine of separation of powers, namely:
>
> (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year without complying with the statutory definition of savings contained in the General Appropriations Acts; and
>
> (b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive.
>
> The Court further **DECLARES VOID** the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets for non-compliance with the conditions provided in the relevant General Appropriations Acts.

SO ORDERED.

Sereno, C.J., Peralta, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, *J.,* see separate opinion.

Brion, J., left his vote; see his separate opinion. (Qualified concurrence):

Leonen, J., see concurring opinion.

Velasco, Jr., joins the concurring and dissenting opinion of Del Castillo, *J.*

Del Castillo, J., see concurring and dissenting opinion.

Leonardo-de Castro, J., No part. (Due to close relations with one of the counsels of a party.)

Jardeleza, J., no part, prior action as Sol. Gen.

SEPARATE OPINION

CARPIO, *J.*:

The Motion for Reconsideration filed by respondents must be denied for lack of merit.

I. Statutorily-defined "savings" does not make the issues raised in the petitions less constitutional.

In their Motion for Reconsideration, respondents contend, among others, that "the issues [in these consolidated cases] were mischaracterized and unnecessarily constitutionalized." Respondents argue that "[w]hile "savings" is a constitutional term, its meaning is entirely legislatively determined. x x x." Respondents assert that the question of "whether the Executive properly accumulated savings is a matter of statutory interpretation involving the question of administrative compliance with the parameters set by the GAA, not by the Constitution."

Indeed, the term "savings," as used in Section 25(5), Article VI of the Constitution, is defined by law, the General Appropriations Act (GAA).

However, the definition of the term "savings" by statute does not make the threshold issue in these petitions purely a question of statutory interpretation. Whether respondents violated the prohibition in Section 25(5), Article VI of the Constitution, regarding "savings" and "augmentation," falls squarely within the category of a constitutional issue which in turn necessarily demands a careful examination of the definition of these terms under the relevant GAAs in relation to the use of these terms in the Constitution.

Significantly, aside from the term "savings," there are other words found in several provisions of the Constitution which are defined by law. The terms "contract," "capital" and "political dynasty," found in the following provisions of the Constitution, are defined or to be defined either by law or jurisprudence.[1]

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[1] Other terms in the Constitution that are defined or to be defined by statute or by jurisprudence:

Art. III, Sec. 10
Section 10. No law impairing the obligation of contracts shall be passed.

Article XII, Sec. 11
Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose *capital* is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Article II, Sec. 26

Section 26. The State shall guarantee equal access to opportunities for public service and prohibit *political dynasties* as may be defined by law.

While these terms in the Constitution are statutorily defined, a case involving their usage does not automatically reduce the case into one of mere statutory interpretation. On the contrary,

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1. social justice (Article II, Sec. 10 and Art. XIII)
2. due process and equal protection (Art. III, Sec. 1)
3. taking of private property (Article III, Sec. 9)
4. writ of *habeas corpus* (Article III, Sec. 15)
5. *ex-post facto* law and bill of attainder (Article III, Sec. 22)
6. naturalized citizen (Article IV, Sec. 1)
7. martial law (Article VII, Sec. 18)
8. reprieve, commutation and pardon (Article VII, Sec. 19)
9. engaged in the practice of law (Article IX, Sec. 1)
10. academic freedom (Article XIV, Sec. 5[2])

it highlights the dynamic process of scrutinizing the statutory definition of certain terms and determining whether such definition conforms to the intent and language of the Constitution.

II. The definition of the term "savings" has been consistent. Any redefinition of the term must not violate the Constitution.

Prior to 2003, the term "savings" has been consistently defined in the GAAs as "portions or balances of any programmed appropriation x x x free of any obligation or encumbrance still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay."

Beginning 2003, a third source of savings was added. Thus, "savings" has been defined in the GAAs as "portions or balances of any programmed appropriation x x x free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of collective negotiation agreements which resulted in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services x x x at a lesser cost."

Assuming redefining the term "savings" is deemed necessary by Congress, such redefinition must be consistent with the Constitution. For example, "savings" cannot be declared at anytime, like on the first day of the fiscal year, since it will negate or render useless the power of Congress to appropriate. "Savings" cannot also be declared out of **future** Maintenance and Other Operating Expenses (MOOE) since such declaration will deprive a government agency of operating funds during the rest of the fiscal year, effectively abolishing the agency or paralyzing its operations. Any declaration of "savings" must be

reasonable, that is, there must be appropriations that are no longer needed or can no longer be used for the purpose for which the appropriations were made by Congress.

III. Respondents' consistent argument of mootness defeats their newly-raised contention of adverse effects as a result of the decision in this case.

In their Motion for Reconsideration, respondents allege that the DAP was a response to a fiscal emergency[2] and DAP had already become operationally dead.[3]

During the Oral Arguments, respondents asserted that the present petitions be dismissed on the ground of mootness. Respondents maintained that the DAP has become *functus officio*.

(1) Presentation of Secretary Abad

In conclusion, Your Honors, may I inform the Court that because the DAP has already fully served its purpose, the Administration's economic managers have recommended its termination to the President. Thank you and good afternoon.[4]

(2) Presentation of the Solicitor General

Your Honors, what we have shown you is how the DAP was used as a mechanism for building the DREAM and other projects. This constitutional exercise, repeated 115 times, is the story of the DAP. **As Secretary Abad showed you, the circumstances that justified the creation of DAP no longer obtained. The systematic issues that slowed down public spending have been resolved, and line agencies now have normal levels of budget utilization. This is indicated by the diminishing use of DAP, which lapsed into complete disuse in the second half of 2013, and thus became legally functus officio. The President no longer has any use for DAP in 2014.** This is a compelling fact and development that we respectfully submit undermines the viability of the present petitions and puts in issue the necessity of deciding these cases in the first

[2] Motion for Reconsideration, p. 9.

[3] Motion for Reconsideration, p. 11.

[4] TSN, 28 January 2014, p. 14.

place. The same constitutional authority used by the President to pump-rise the economy in the first half of his Administration has not transitioned to providing relief and rehabilitation in areas of our country struck by destructive calamities. This only emphasized our point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.

DAP as a program, no longer exists, thereby mooting these present cases brought to challenge its constitutionality. Any constitutional challenge should no longer be at the level of the program, which is now extinct, but at the level of its prior applications or the specific disbursements under the now defunct policy.[5] x x x. (Emphasis supplied)

(3) Justice Leonen's questions

JUSTICE LEONEN:
Ok, you are now saying... Alright, I heard it twice: Once, by the DBM Secretary and second, by your representations that DAP is no longer there.

SOLICITOR GENERAL JARDELEZA:
That's right.

JUSTICE LEONEN:
Did I hear you correctly?

SOLICITOR GENERAL JARDELEZA:
That's correct, Your Honor.

JUSTICE LEONEN:
Is there an amendatory.... is there a document, an officially released document that would clearly say that there is no longer DAP?

SOLICITOR GENERAL JARDELEZA:
I do not believe so, Your Honor, but as the Secretary has said the economic managers have, in fact, already recommended to the President that there is no need for DAP.

JUSTICE LEONEN:
Is it because the case has been filed, or because of another reason?

SOLICITOR GENERAL JARDELEZA:
No, Your Honor, because the DAP 541 has become *functus officio*.

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[5] TSN, 28 January 2014, p. 23.

JUSTICE LEONEN:
So it was not applicable in fiscal year 2013, there was no DAP in 2013?

SOLICITOR GENERAL JARDELEZA:
There was still some diminishing DAP application up to the middle of 2013 but none in the second half, Your Honor.

JUSTICE LEONEN:
Again, can you enlighten us what is "diminishing" means, what project?

SOLICITOR GENERAL JARDELEZA:
For 2013, the DAP application was only.... in the first half of 2013, it was only 16.03 Billion, Your Honor.

JUSTICE LEONEN:
Still a large amount.

SOLICITOR GENERAL JARDELEZA:
Still a large amount but if we have given the total applications approved was a Hundred and Forty-Nine Million, Your Honor.

JUSTICE LEONEN:
Okay. The good Secretary mentioned the Disbursement Acceleration Program is more that just savings and more that just unprogrammed funds containing the GAA that it was a package of reforms meant to accelerate the spending of government so as to expand the economy by saying that the DAP is no longer there, do you mean the entire thing or only the portion that mean savings and the unprogrammed funds?

SOLICITOR GENERAL JARDELEZA:
By that we mean, Circular 51, Your Honor.

JUSTICE LEONEN:
Circular 541, therefore, is no longer existing.

SOLICITOR GENERAL JARDELEZA:
Yes, Your Honor.[6]

(4) Justice Abad's questions

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[6] TSN, 28 January 2014, pp. 81-83.

JUSTICE ABAD:

Yes. So, can we not presume from this, that this government know its departments and agencies whether it has capability to spend so much money before proposing it to Congress and that in five months you are going to say, "I just discovered they cannot do it and I'm going to abandon some of these projects and use the money for other things." Is that.... that seems logical for a government that proposes budget to be spent for a specific purpose and then within five months abandon them. How can you explain that?

SOLICITOR GENERAL JARDELEZA:

Again, my explanation. Your Honor, is that logic and our wish may not be reality. The reality was: on 2010 the administration comes in, they have managers, the orders given, use it or lose it; there is slippage, there is delay. By the middle of 2013, they have gotten their act together, they are now spending to the tune, to the clip because the president wants them to do. Therefore, there is no more DAP.[7]

x x x x x x x x x

JUSTICE ABAD:

It worked for you?

SOLICITOR GENERAL JARDELEZA:

It worked, Your Honor.

JUSTICE ABAD:

But why are you abandoning it already when....

SOLICITOR GENERAL JARDELEZA:

Because it worked, Your Honor.

JUSTICE ABAD:

...in the future such problems as calamities, etc., can take place, if it's not an admission that something is wrong with it?

SOLICITOR GENERAL JARDELEZA:

It has stopped because it worked, Your Honor.[8]

Likewise, in their Memorandum, respondents averred that "[t]he termination of the DAP has rendered these cases moot,

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[7] TSN, 28 January 2014, p. 103.

[8] TSN, 28 January 2014, p. 105.

leaving any question concerning the constitutionality of its prior applications a matter for lower courts to decide." Respondents alleged:

> *1. DAP, as a program, no longer exists.*
>
> *82.* As respondents manifested before this Honorable Court during the second hearing, the DAP no longer exists. The President's economic advisers have reported to him that the systemic issues that had slowed down public spending have been resolved, and line agencies now had normal levels of budget utilization. This is indicated by the diminishing use of DAP, which downward shift continued in 2012 and 2013, and its total disuse by the last quarter of 2013. Thus, even before the various present petitions were filed, DAP had already become operationally dead. Contrary to what some have intimated, DAP was not stopped or withdrawn because there was "something wrong with it" - rather, it became *functus officio* because it had already worked. Petitioners are challenging the ghost of a program.
>
> *83.* The President no longer has any use for DAP in 2014 and its total disuse means that [] there is no longer an ongoing program that the Honorable Court can enjoin. This is a compelling fact that undermines the viability of the present cases, and puts in issue the necessity of deciding these cases in the first place. Moreover, the same constitutional authority used by the President to pump-prime the economy in the first half of his administration has now transitioned to providing relief and rehabilitation to areas of our country struck by destructive calamities. This only emphasizes respondents' point that generic constitutional tools can take on different purposes depending on the exigencies of the moment.[9]

Clearly, respondents' argument of mootness on the ground that the DAP had served its purpose negates the government's fears of the "chilling effect" of the Decision to the economy and the rest of the country. If the DAP had already achieved its goal of stimulating the economy, as respondents repeatedly and consistently argued before the Court, then no adverse economic effects could possibly result in the declaration of unconstitutionality of the DAP and the practices undertaken under the DAP.

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[9] Memorandum, p. 30.

Hence, the grim scenario of prolonging assistance to victims in case of calamities due to this Court's decision has no basis precisely because to repeat, according to respondents, the DAP had already served its purpose. Significantly, the President has an almost unlimited resources that he can tap and juggle for reconstruction and rehabilitation of affected areas in cases of emergencies and calamities. For these unforeseen tragic natural events, the President can certainly utilize the Calamity Fund or the Contingent Fund in the GAA, as well as his Discretionary Fund and Presidential Social Fund.

In the 2011 GAA, the Calamity Fund amounted to ₱5,000,000,000 while the Contingent Fund amounted to ₱1,000,000,000. In the 2012 GAA, the Calamity Fund amounted to ₱7,500,000,000 while the Contingent Fund amounted to ₱1,000,000,000. For 2013, the Calamity Fund amounted to ₱7,500,000,000 while the Contingent Fund amounted to ₱1,000,000,000. For 2014, the National Disaster Risk Reduction and Management Fund amounted to ₱13,000,000,000 while the Contingent Fund amounted to ₱1,000,000,000. In addition, the 2014 GAA provided for Rehabilitation and Reconstruction Program (for rehabilitation, repair and reconstruction works and activities of areas affected by disasters and calamities, both natural and man-made including the areas devastated by typhoons "Yolanda," "Santi," "Odette," "Pablo," "Sendong," "Vinta" and "Labuyo," the 7.2 magnitude earthquake in Bohol and Cebu and the siege and unrest in Zamboanga City) amounting to ₱20,000,000,000.

Moreover, the President has more than enough time to observe and comply with the law and request for a supplemental budget from Congress. In the PDAF cases, I pointed out:

> x x x. When the Gulf Coast of the United States was severely damaged by Hurricane Katrina on 29 August 2005, the U.S. President submitted to the U.S. Congress a request for an emergency supplemental budget on 1 September 2005. The Senate passed the request on 1 September 2005 while the House approved the bill on 2 September 2005, and the U.S. President signed it into law on the same day. It took only two days for the emergency supplemental appropriations to be approved and passed into law. There is nothing

that prevents President Benigno S. Aquino III from submitting an emergency supplemental appropriation bill that could be approved on the same day by the Congress of the Philippines. x x x.

IV. The earmarking of judiciary savings for the construction of the Manila Hall of Justice is not a cross-border transfer of funds.

In their Motion for Reconsideration, respondents point out that this Court itself committed a cross-border transfer of funds, citing the Court's 17 July 2012 Resolution that approved the earmarking of ₱1,865,000,000 for the construction of the Manila Hall of Justice. Respondents allege that the construction of the Manila Hall of Justice was an item in the appropriations for Department of Justice in the 2012 GAA. Respondents assumed, obviously incorrectly, that this Court transferred the amount of ₱1,865,000,000 to augment the items appropriated to the DOJ for the construction of the Manila Hall of Justice.

Pursuant to its "fiscal automony"[10] under the Constitution, the Court on 17 July 2012 adopted a Resolution setting aside and earmarking from its savings ₱1,865,000,000 for the construction costs of the Manila Hall of Justice. The amount was earmarked for a particular purpose, specifically the construction of the Manila Hall of Justice. However, contrary to respondents' allegation, the amount for this purpose was never transferred to the Department of Justice or to any agency under the Executive branch. In fact, the Court kept the entire amount in its own account because it intends to construct the Manila Hall of Justice by itself. There is nothing in the language of the 17 July 2012 Resolution transferring the amount to the DOJ.

Notably, under the 2013 GAA, the Construction/Repair/ Rehabilitation of Halls of Justice was already placed under the budget of the Judiciary. Under the 2014 GAA, the provision on

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[10] SECTION 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Capital Outlays (Buildings and Other Structures) remains under the Judiciary (Annex A of the 2014 GAA). There is no provision in the 2013 and 2014 GAAs for the construction of any Hall of Justice under the DOJ.

The construction and maintenance of the Halls of Justice are essentially among the responsibilities of the Judiciary. As such, they should necessarily be included in the annual appropriations for the Judiciary. However, before 2013, Congress placed the construction and maintenance of the Halls of Justice under the DOJ. The inclusion of such item in the DOJ budget clearly creates an anomaly where the Judiciary will have to request the DOJ, an Executive department, to construct a Hall of Justice for the Judiciary. Not only does this undermine the independence of the Judiciary, it also violates ultimately the constitutional separation of powers because one branch is made to beg for the appropriations of another branch to be used in the operations of the former.

V. Various other local projects (VOLP) is not an item in the GAA.

As I stated in my Separate Concurring Opinion, "[a]ttached to DBM Secretary Abad's Memorandum for the President, dated 12 October 2011, is a Project List for FY 2011 DAP. The last item on the list, item no. 22, is for PDAF augmentation in the amount of ₱6.5 billion, also listed as **"various other local projects**."[11]

"Savings can augment any ***existing*** item in the GAA, provided such item is in the "respective appropriations" of the same branch or constitutional body. As defined in Section 60, Section 54, and Section 53 of the General Provisions of the 2011, 2012 and 2013 GAAs, respectively, "augmentation implies the **existence x x x of a program, activity, or project with an appropriation**, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. **In no case shall a non-existent program, activity, or project, be funded by augmentation from savings** x x x."

[11] *Rollo* (G.R. No. 209287), p. 536.

It must be noted that the item **"various other local projects"** in the DBM's *Memorandum* to the President is not an existing item in the 2011, 2012 and 2013 GAAs. In respondents' Seventh Evidence Packet, the term "other various local projects" refers not to a specific item in the GAAs since no such term or item appears in the relevant GAAs. Rather, such term refers to various soft and hard projects to be implemented by various government offices or local government units. Therefore, to augment "various other local projects," a non-existing item in the GAA, violates the Constitution which requires the existence of an item in the general appropriations law. Likewise, it defies the express provision of the GAA which states that "[i]n no case shall a non-existent program, activity, or project, be funded by augmentation from savings x x x."

VI. Release of the Unprogrammed Fund

One of the sources of the DAP is the Unprogrammed Fund under the GAA. The 2011, 2012, and 2013 GAAs have a common condition on the Release of the [Unprogrammed] Fund: that the "**amounts authorized herein shall be released *only* when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution x x x**." The condition in these provisions is clear and thus needs no interpretation, but only application. In other words, this express condition, that actual revenue collections must exceed the original revenue targets for the release of the Unprogrammed Fund, must be strictly observed. It is not for this Court to interpret or lift this condition. To do so is tantamount to repealing these provisions in the GAA and giving the President unbridled discretion in the disbursement of the Unprogrammed Fund.

The disbursement of the Unprogrammed Fund is determined on a quarterly basis. The revenue targets are set by the Development Budget Coordination Committee (DBCC) for each quarter of a specific fiscal year. The DBCC bases its quarterly fiscal targets on historical cumulative revenue collections. For instance, in FY 2013, the quarterly fiscal targets are as follows:

2013 QUARTERLY FISCAL PROGRAM[12]

PARTICULARS	LEVELS (in billion pesos)					% DISTRIBUTION				
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Revenues	378.8	482.2	434.2	450.6	1,745.9	21.7	27.6	24.9	25.8	100
Disbursements	452.7	493.0	494.0	544.2	1,983.9	22.8	24.9	24.9	27.4	100
Surplus/(Deficit)	(73.9)	(10.8)	(59.8)	(93.6)	(238.0)	31.0	4.5	25.1	39.3	100

Considering that revenue targets are determined quarterly, revenue collections are ascertained on a quarterly basis as well. Therefore, if the government determines that revenue collections for a certain quarter exceed the revenue target for the same quarter, the government can lawfully release the appropriations under the Unprogrammed Fund. In other words, the government need not wait for the end of the fiscal year to release and spend such funds if at the end of each quarter, it has already determined an excess in revenue collections.

There are two kinds of funds under the GAA – the programmed fund and the unprogrammed fund. Under the programmed fund, there is a definite amount of spending authorized in the GAA, regardless of whether the government collects the full amount of its revenue targets for the fiscal year. Any deficit can be funded from borrowings. Such deficit spending from the programmed fund is acceptable and is carefully calculated not to trigger excessive inflation. On the other hand, under the unprogrammed fund, the government can only spend what it collects; otherwise, it may trigger excessive inflation. That is why the GAA prohibits spending from the unprogrammed fund unless the corresponding amounts are actually collected. To allow the disbursement of the unprogrammed fund without complying with the express condition imposed under the GAA will send a negative signal to businessmen and creditors because the government will be spending beyond its means – in effect borrowing or printing money. This will adversely affect

[12] http://www.dbm.gov.ph/wp-content/uploads/DBCC_MATTERS/Fiscal_Program/FiscalProgramOfNGFy_2013.pdf (visited on 20 January 2015).

investments and interest rates. Compliance or non-compliance with the express condition reflects the government's fiscal discipline or lack of it.

VII. The applicability of the doctrine of operative fact

I reiterate my position that the operative fact doctrine never validates or constitutionalizes an unconstitutional law.[13]

An unconstitutional act confers no rights, imposes no duties, and affords no protection.[14] An unconstitutional act is inoperative as if it has not been passed at all.[15] The exception to this rule is the doctrine of operative fact. Under this doctrine, the law or administrative issuance is recognized as unconstitutional but **the effects** of the unconstitutional law or administrative issuance, prior to its declaration of nullity, may be left undisturbed as a matter of **equity and fair play**.[16]

As a rule of equity, the doctrine of operative fact can be invoked only by those who relied in good faith on the law or the administrative issuance, prior to its declaration of nullity. Those who acted in bad faith or with gross negligence cannot invoke the doctrine. Likewise, those **directly responsible** for an illegal or unconstitutional act cannot invoke the doctrine. He who comes to equity must come with clean hands,[17] and he who seeks equity must do equity.[18] **Only those who merely relied in good faith on the illegal or unconstitutional act,**

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[13] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, *et al.,* 24 August 2010, 628 SCRA 819.

[14] *Chavez v. Judicial and Bar Council,* G.R. No. 202242, 16 April 2013, 696 SCRA 496, 516.

[15] *Id*.

[16] *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, *et al.,* 24 August 2010, 628 SCRA 819, 832; *Commissioner of Internal Revenue v. San Roque Power Corporation,* G.R. No. 187485, 8 October 2013, 707 SCRA 66.

[17] *Chemplex (Phils.), Inc. v. Pamatian*, 156 Phil. 408 (1974); *Spouses Alvendia v. Intermediate Appellate Court*, 260 Phil. 265 (1990).

[18] *Arcenas v. Cinco*, 165 Phil. 741 (1976).

without any direct participation in the commission of the illegal or unconstitutional act, can invoke the doctrine.

To repeat, the power to realign savings is vested in the President with respect to the executive branch, the Speaker for the House of Representatives, the Senate President for the Senate, the Chief Justice for the Judiciary, and the Heads of the Constitutional Commissions.

In these cases, it was the President who approved NBC 541, and it was the DBM Secretary who issued and implemented it. NBC 541 directed the "withdrawal of unobligated allotments of agencies with low level of obligations as of June 30, 2012" to augment or fund "priority and/or fast moving programs/projects of the national government." As discussed, unobligated allotments are not savings, which term has a specific and technical definition in the GAAs. Further, paragraph 5.7.3 of NBC 541 authorizing the augmentation of "projects not considered in the 2012 budget" is unconstitutional because under Section 25(5), Article VI of the Constitution, what is authorized is "to augment any item in the general appropriations law for their respective offices."

Since the President and the DBM Secretary approved and issued NBC 541, they are considered the authors of the unconstitutional act. As a consequence, neither the President nor the DBM Secretary can invoke the equitable doctrine of operative fact although they may raise other defenses. As authors of the unconstitutional act, they have to answer for such act.

The proponents and implementors of the projects under the DAP are presumed to have relied in good faith that the source, or realignment, of the funds is valid. To illustrate, a governor, who proposes to the President or DBM to build a school house and receives funds for such project, simply accepts and spends the funds, and would have no idea if the funds were validly realigned or not by the President. Another example is a district engineer, who receives instructions to construct a bridge and receives funds for such project. The engineer is solely concerned with the implementation of the project, and thus would also have no idea whether the funds were validly realigned or not

by the President. Clearly, the proponents and implementors, who had no direct participation in the commission of the unconstitutional act and merely relied in good faith that such funds were validly appropriated or realigned for the projects, cannot be held liable for the unconstitutional act, unless they themselves committed an illegal act, like pocketing the funds.

ACCORDINGLY, I vote to **DENY** the respondents' Motion for Reconsideration.

SEPARATE OPINION
(Qualified Concurrence)

BRION, *J.*:

I write this SEPARATE OPINION (Qualified Concurrence) to express my qualified agreement with the *ponencia*'s DENIAL WITH FINALITY of the parties' respective motions for reconsideration of the Court's Decision in these consolidated cases, promulgated on July 1, 2014.

I qualify my concurrence as I do not completely agree with the *ponencia's* views on AUGMENTATION; our commonly held views on this topic should take effect in the present case and in all similar future cases. While I share the *ponencia'*s views on the OPERATIVE FACT DOCTRINE, I believe that our ruling is direct, in point and is necessary to the full resolution of the present case. It is not at all an *obiter dictum*.

Last but not the least, I also offer my thoughts on the Court's exercise of judicial review in these cases, and its impact on the public funds and the participants involved.

The Decision under Consideration.

We declared in our Decision that the Executive's Disbursement Acceleration Program (*DAP*) is ***unconstitutional*** for violating the principle of ***separation of powers***, as well as the prohibition

against the ***transfers and augmentation of funds*** under Article VI, Section 25, paragraph 5[1] of the 1987 Constitution.

This cited constitutional provision states that no transfer of appropriations from one item to another may be made except within very narrow exceptions. The DAP, described by its proponents as a "mechanism to support high-impact and priority programs and projects using savings and unprogrammed funds,"[2] facilitated the transfer of appropriations without complying with the requirements to allow the exceptional transfer of appropriation that the Constitution imposes:

(1) The General Appropriation Acts (*GAAs*) of 2011 and 2012 lacked the appropriate provisions authorizing the transfer of funds. Contrary to the constitutional provision limiting the transfer of savings within a single branch of government, the GAAs ***authorized the "cross-border" transfer of savings from appropriations in one branch of government to other branches***;

(2) Some of the funds used to finance DAP projects ***were not sourced from savings***. Savings could be generated only when the purpose of the appropriation has been fulfilled, or when the need for the appropriation no longer exists. Under these standards, the unobligated allotments and unreleased appropriations, which the Executive used to fund the DAP, were not savings.

(3) Some of the ***projects funded through the DAP do not have items in the GAA***; hence, the Executive – in violation of the Constitution – usurped the Legislative's

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[1] No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

[2] Department of Budget and Management, The Disbursement Acceleration Program: What You Need to Know About DAP, http://www.gov.ph/featured/dap/.

power of the purse by effectively allocating and spending funds on its own authority.

(4) ***Funds*** that the DAP ***sourced from the Executive had been used to augment items in other branches of the government***, thus violating the rule against the transfer of funds from one branch of government to another.

(5) The DAP ***unlawfully released and allowed the use of unprogrammed funds***,[3] without complying with the prior requisite that the original revenue targets must have first been exceeded.

The Court's ruling also explained and clarified the application of the ***Doctrine of Operative Fact*** to the case. We pointed out the ***general rule*** (**the *void ab initio doctrine***) that "an unconstitutional act is not a law and in legal contemplation, as inoperative as though it had never been passed."[4]

Without changing this rule of invalidity (*i.e.*, without rendering the unconstitutional act valid), the ***effects of actions*** made pursuant to the unconstitutional act or statute ***prior to the declaration of its unconstitutionality***, may be recognized if the strict application of the general rule would result in ***inequity and injustice***, ***and*** if the ***prior reliance*** on the unconstitutional statute had been made ***in good faith***.[5]

In the context of the case before us and as explained in my Separate Opinion supporting *J.* Lucas Bersamin's *ponencia*,

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[3] Unprogrammed Funds are standby appropriations authorized by Congress in the annual general appropriations act. Department of Budget and Management, A Brief on the Special Purpose Funds in the National Budget (Oct. 5, 2013) available at http://www.dbm.gov.ph/wp-content/uploads/DAP/Note%20n%20the#20Special%20Purpose%20Funds%20_Released%20-%20Oct%202013_.pdf. Note, however, that this definition had been abbreviated to accomodate special provisions that may be required by Congress prior to the release of uprogrammed funds.

[4] The term *ab initio* doctrine was first used in the case *Norton v. Shelby Conty*, 118 US 425, 6 S. Ct. 1121, 30 L. Ed. 178 (1886).

[5] See the *ponencia* in the main decision in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, pp. 85 - 90, Brion, *J.*'s *Separate Concurring* Opinon, pp. 52 - 62.

the Doctrine of Operative Fact is a ***rule established in favor of those who relied in good faith on an unconstitutional law prior to the declaration of its invalidity***. It is not a doctrine for those who did not rely on the law because they were the authors, proponents and implementers of the unconstitutional act.

I. My Concurrence

I agree with the majority that the points raised in the parties' motions for reconsideration no longer need to be further discussed as they had been raised and passed upon in the Court's original ruling. If I add my concurrence at all, the addition is only to clarify and explain my vote in my own terms, hoping thereby to explain as well the full import of the majority's ruling.

First, the Court did not "unnecessarily constitutionalize" the issues before it. As the majority concluded, the final determination of whether the provisions of the GAA (including its definition of "savings") adhere to the terms of the Constitution, is first and foremost a judicial function.

The issues raised and resolved, at their core, involve the question of whether the government gravely abused its discretion in its expenditure of funds. To answer this question through the exercise of the Court's power of judicial review, the Court had to look at both the relevant laws and the constitutional provisions governing the budget expenditure process, and to use them as standards in considering the acts alleged to have been committed with grave abuse of discretion.

The use of the Constitution in fact is rendered necessary by its provisions detailing how the national funds are to be safeguarded in the course of their allocation and expenditure.[6] These details are there for one primary and overriding purpose – to safeguard the funds and their integrity.[7]

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[6] *See*, for instance, Sections 24, 25, 27 (2), 29, Article VI of the 1987 Constitution.

[7] The Constitution, in specifying the process for and providing checks and balances in the formulation, enactment, implementation and audit of the national budget seeks to ensure that public funds shall be spent only for a public purpose, determined by Congress through a law.

Thus, we could not have fully fulfilled our judicial review task had we limited ourselves solely to the statutory interpretation of the Administrative Code of 1987. Incidentally, the petitioners themselves cited the same constitutional rules we cited and/or passed upon, to support and defend their positions; the parties fully argued the merits and demerits of their respective causes based on these cited constitutional rules. *Thus, it appears too late in the day to argue that only the Administrative Code of 1987 should have been used as standard of review.*

Second, The legislatively defined term "savings", although arrived at through the exercise of the congressional power of the purse, cannot and should not be understood as an overriding, exclusive and conclusive standard in determining the propriety of the use of public funds; the congressional definition cannot go against or undermine the standards set by the Constitution on the use of public funds. In other words, in defining "savings", the Legislature cannot defy nor subvert the terms laid down by the Constitution.

Third, past executive practice does not *and cannot* legalize an otherwise unconstitutional act. While executive interpretation in the course of applying the law may have persuasive effect in considering the constitutionality of the law the Executive implements, executive interpretation is not the applicable nor the conclusive legal yardstick to test the law's validity.[8] The

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[8] ***The interpretation of an administrative government agency xxx which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.*** A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. x x x

"The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to

assailed law, first and foremost, should be consistent with the terms of the Constitution, as explained and interpreted by the Judiciary through its rulings.[9]

Precisely, a third branch of government – the Judiciary – has been made a co-equal component in the governmental

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have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.

"As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws, especially those involving specific terms having technical meanings.

However, ***courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader***.

Stated differently, when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means. Thus, ***an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law***. *Energy Regulation Board v. Court of Appeals*, 409 Phil. 36, 47 - 48 (2001). citation omitted

[9] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. *De Agbayani v. Philippine National Bank*, 148 Phil. 443, 447 (1971).

x x x administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means.' It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. ***No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative***. *Bautista v. Juinio*, 212 Phil. 307, 321 (1984), citing *Teoxon v. Member of the Board of Administrators*, L-25619, June 30, 1970, 30 SCRA 585, *United States v. Barrias*, 11 Phil. 327 (1908); *United States v. Tupasi Molina*, 29 Phil. 119 (1914); *People v. Santos*, 63 Phil. 300 (1936); *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439, *Victorias Milling Co. v. Social Security Commission*, 114 Phil. 555 (1962). Cf. *People v. Maceren*, L-32166, October 18, 1977, 79 SCRA 450 (per Aquino, *J.*).

structure, to pass upon the constitutionality and legality of the acts of the Executive and the Legislative branches when these acts are questioned.[10] In exercising this function, the Judiciary is always guided by the rule that the Constitution is the supreme law and all acts of government, including those of the Court, are subject to its terms.[11] The Executive, to be sure, has no basis to claim exception to this norm, based solely on the practice that it and the Legislative Branch of government have established in the past.

Fourth, Section 39,[12] Chapter 5, Book VI of the Administrative Code, in allowing the President to transfer funds from and to

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[10] The judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature. *Tañada v. Angara*, 338 Phil. 546, 574 – 575 (1997) former Chief Justice Roberto Concepcion's discussion during the Constitutional Commission's deliberations on judicial power.

[11] The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[12] Section 39. Authority to Use Savings in Appropriations to Cover Deficits. - Except as otherwise provided in the General Appropriations Act, any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations: provided, that the creation of new positions or increase of salaries shall not be allowed to be funded from budgetary savings except when specifically authorized by law: provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however increasing the total outlay for personal services of the department, office or agency concerned.

any regular appropriation – regardless of the branch of government to which the fund is allotted – violates Article VI, Section 25, paragraph 5, of the 1987 Constitution.

Fifth, The Court discussed the Operative Fact Doctrine in its ruling to clarify the ***effects of the declaration of the unconstitutionality of the DAP,*** given the rule that an unconstitutional act or statute is void from the beginning.

The Court's discussion clarifies the ***effects*** on the public funds already disbursed and spent, on the projects that can no longer be undone, and on the officials who disbursed and spent the unconstitutional DAP funds before the declaration of the DAP's unconstitutionality. ***This ruling is not an obiter dictum as it directly bears on the constitutional issues raised***.

I shall discuss the Operative Fact Doctrine in greater detail, in relation with the points raised in the parties' motions, to remove all doubts and misgivings about this Doctrine and its application to the present case.

II. The Court's Exercise of Judicial Review over the DAP

The respondents question the Court's exercise of judicial review on the DAP based on two grounds:

First, the Court cannot exercise its power of judicial review without an actual case or controversy. The second paragraph in Section 1, Article VIII of the 1987 Constitution did not expand the Court's jurisdiction, but instead added to its judicial power the authority to determine whether grave abuse of discretion had intervened in the course of governmental action.[13]

The respondents further posit that before this Court may exercise this additional aspect of judicial power, the petitioners must first comply with the requisites of an actual case or controversy; the petitioners failed to comply with this requirement and to show as well their standing to file their petitions in view of the absence of any injury or threatened injury resulting from the enforcement of the DAP.

[13] Respondents' Motion for Reconsideration, pp. 38 - 48.

Second, the issues resolving the DAP's legality had been unnecessarily constitutionalized. These questions should have been examined only against the statutes involving the national budget. Had this been done, the DBM's interpretation of these statutes is entitled to a heavy presumption of validity. The respondents consequently insist that the Court's interpretation of "savings" and the requisites for the release of "unprogrammed funds" is contrary to the established practices of past administrations, Congress, and even those of the Supreme Court.

The respondents assert that their cited past practices should be given weight in interpreting the relevant provisions of the laws governing the national budget. The respondents cite, by way of example, the definition of savings. The Court's interpretation of savings, according to the respondents, can be overturned by subsequent legislation redefining "savings, thus proving that the issue involves statutory, and not constitutional interpretation."[14] The respondents similarly argue with respect to the President's release of the unprogrammed funds that the presidential action only involves the interpretation of relevant GAA provisions.[15]

I shall address these issues in the same order they are posed above.

A. The petitioners successfully established a prima facie case of grave abuse of discretion sufficient to trigger the Court's expanded jurisdiction.

The concept of judicial power under the 1987 Constitution recognizes the Court's *(1)* ***traditional jurisdiction*** to settle actual cases or controversies; and *(2)* its ***expanded jurisdiction*** to determine whether a government agency or instrumentality committed grave abuse of discretion in the course of its actions.

The exercise of ***either power*** involves the exercise of the Court's power of judicial review, *i.e.,* the Court's authority to

[14] Respondents' Motion for Reconsideration, pp. 5 - 8.

[15] Respondents' Motion for Reconsideration, pp. 29 - 35.

strike down acts – of the Legislative, the Executive, the constitutional bodies, and the administrative agencies – that are contrary to the Constitution.[16]

Judicial review under the Court's **traditional jurisdiction** requires the following justiciability requirements: (1) the existence of an ***actual case or controversy*** calling for the exercise of judicial power; (2) the person challenging the act must have the ***standing*** to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of

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[16] See the discussion of judicial supremacy in *Angara v. Electoral Commission, supra*, as juxtaposed with the discussion of the Court's expanded *certiorari* jurisdiction in *Francisco, Jr. v. The House of Representatives,* 460 Phil. 830, 882 - 883, 891 (200):

The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, "x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them." To him, "[j]udicial review is the chief, indeed the only, medium of participation – or instrument of intervention – of the judiciary in that balancing operation."

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "any branch or instrumentalities of government," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded *certiorari* jurisdiction" of this Court x x x.

x x x x x x x x x

There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr*., this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. x x x

constitutionality must ***be raised at the earliest opportunity***; and (4) the issue of constitutionality must be the very ***lis mota*** of the case.[17]

In comparison, the exercise of the Court's **expanded jurisdiction** to determine whether grave abuse of discretion amounting to lack of or excess of jurisdiction has been committed by the government, is triggered by a *prima facie* showing of grave abuse of discretion in the course of governmental action.[18]

A reading of Section 1, Article VIII of the 1987 Constitution, quoted below, shows that ***textually***, the commission of grave abuse of discretion by the government is the cause that triggers the Court's expanded judicial power and that gives rise to the actual case or controversy that the complaining petitioners (who had been at the receiving end of the governmental grave abuse) can invoke in filing their petitions. In other words, the commission of grave abuse takes the place of the actual case or controversy requirement under the Court's traditional judicial power.

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice ***to settle actual controversies*** involving rights which are legally demandable and enforceable, ***and to determine whether or not there has been a grave abuse of discretion*** amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

A textual examination of the definition of judicial power shows that two distinct and separate powers are involved over distinct and separate matters.

Under the Court's **traditional jurisdiction**, what are involved are controversies brought about by rights, whether public or

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[17] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[18] See Justice Arturo D. Brion's discussion on the requisites to trigger the Court's expanded jurisdiction in his Separate Concurring Opinion on *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014.

private, which are demandable and enforceable against another. Thus, the "standing" that must be shown is based on the possession of rights that are demandable and enforceable or which have been violated, giving rise to damage or injury and to actual disputes or controversies between or among the contending parties.

In comparison, the **expanded jurisdiction** – while running along the same lines – involves a dispute of a totally different nature. It does not address the rights that a private party may demand of another party, whether public or private. It solely addresses the relationships of parties to any branch or instrumentality of the government, and allows direct but limited redress against the government; the redress is not for all causes and on all occasions, but only when a grave abuse of discretion on the part of government is alleged[19] to have been committed, to the petitioning party's prejudice. Thus, the scope of this judicial power is very narrow, but its focus also gives it strength as it is a unique remedy specifically fashioned to actualize an active means of redress against an all-powerful government.

These distinctions alone already indicate that the two branches of judicial power that the Constitution expressly defines should be distinguished from, and should not be confused with, one another.

The case or controversy falling under the Court's jurisdiction, whether traditional or expanded, relates to disputes under the terms the Constitution expressly requires. But because of their distinctions, the context of the required "case or controversy" under the Court's twin powers differs from one another. By the Constitution's own definition, the controversy under the Court's expanded jurisdiction must relate to the rights that a

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[19] By virtue of the Court's expanded *certiorari* jurisdiction, judicial power had been " extended over the very powers exercised by other branches or instrumentalities of government when grave abuse of discretion is present. In other words, the expansion empowers the judiciary, as a matter of duty, to inquire into acts of lawmaking by the legislature and into law implementation by the executive when these other branches act with grave abuse of discretion." *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014 (Brion, *J. separate concurring*).

party may have against the government in the latter's exercise of discretion affecting the complaining party.

The immediate questions, under this view, are two-fold.

First, does the complaining party have a right to demand or claim action or inaction from a branch or agency of government? ***Second***, is there grave abuse of discretion in the government's exercise of its powers, affecting the complaining party?

In the present consolidated cases, the petitions indisputably relate to the budget process that has been alleged (and proven under our assailed Decision) to be contrary to the Constitution; they likewise necessarily relate to the legality and constitutionality of the expenditure of public funds that government raised through taxation, *i.e.,* from forced exactions from people subject to the government's taxing jurisdiction.

As I have separately discussed in my Separate Opinion to our Decision, ***the public funds involved are massive*** and, unfortunately, ***have not been fully accounted for***, ***even with respect only to the portion that the present administration has administered since it was sworn to office on June 30, 2010***.[20] This situation potentially carries with it grave and serious criminal, civil and administrative liabilities.

The petitions also alleged violations of constitutional principles that are critical to the continued viability of the country as a *constitutional democracy*, among them, the *rule of law*, the *system of checks and balances*, and *the separation of powers*.

That the complaining petitioners have a right to question the budget and expenditure processes and their implementation cannot be doubted as they are Filipino citizens and organizations of Filipinos who pay their taxes; who expect that public funds shall be spent pursuant to guidelines laid down by the Constitution and the laws; and who likewise expect that the country will be run as a constitutional democracy by upright leaders and

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[20] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 (Brion *J. separate concurring*) pp. 2 - 4.

responsible institutions, not by shattered institutions headed by misguided leaders and manned by subservient followers.[21]

To be sure, the unimpeded access that the DAP and the illegally diverted funds it made available to the country's political leaders, results not only in the opportunity for the misuse of public funds. Such misuse and the availability of funds in the wrong hands can destroy institutions – even this Court - against whom these funds may be or has been used; rig even the elections and destroy the integrity of the ballot that the nation badly needs for its continued stability; and ultimately convert the country – under the false façade of reform – into the caricature of a republic. These are the injuries that the petitioners wish to avert.

From these perspectives, I really cannot see how the respondents can claim with a straight face that there is no actual case or controversy and that the petitioners have no standing to bring their petitions before this Court.

Stated bluntly, the grounds for the petitions are the acts of grave abuse of discretion alleged to have been committed by the country's executive and legislative leaders in handling the national budget. This is the justiciable controversy that is before

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[21] Compare with requisites for standing as a citizen and as a taxpayer:

The question in standing is whether a party has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Kilosbayan, Incorporated v. Morato*, 316 Phil. 652, 696 (1995), citing *Baker v. Carr*, 369 U.S. 186, 7 L.Ed.2d 633 (1962).

Standing as taxpayer requires that public funds are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed, and that the petitioner is directly affected by the alleged *ultra vires* act. *Bugnay Construction & Development Corp. v. Laron*, 257 Phil. 245, 256 - 257 (1989).

A citizen acquires standing only if he can establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action. *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 352 Phil. 153, 168 (1998).

us, properly filed under the terms of the Constitution. As I already observed in my previous Separate Opinion in this case:

> I note that aside from newspaper clippings showing the antecedents surrounding the DAP, the petitions are filled with quotations from the respondents themselves, either through press releases to the general public or as published in government websites. In fact, the petitions – quoting the press release published in the respondents' website – enumerated disbursements released through the DAP; it also included admissions from no less than Secretary Abad regarding the use of funds from the DAP to fund projects identified by legislators on top of their regular PDAF allocations.
>
> Additionally, the respondents, in the course of the oral arguments, submitted details of the programs funded by the DAP, and admitted in Court that the funding of Congress' e-library and certain projects in the COA came from the DAP. They likewise stated in their submitted memorandum that the President "made available" to the Commission on Elections (COMELEC) the "savings" of his department upon request for fund.
>
> All of these cumulatively and sufficiently lead to a *prima facie case* of grave abuse of discretion by the Executive in the handling of public funds. In other words, these admitted pieces of evidence, taken together, support the petitioners' allegations and establish sufficient basic premises for the Court's action on the merits. While the Court, unlike the trial courts, does not conduct proceedings to receive evidence, it must recognize as established the facts admitted or undisputedly represented by the parties themselves.
>
> First, the existence of the DAP itself, the justification for its creation, the respondent's legal characterization of the source of DAP funds (i.e., unobligated allotments and unreleased appropriations for slow moving projects) and the various purposes for which the DAP funds would be used (i.e., for PDAF augmentation and for "aiding" other branches of government and other constitutional bodies) are clearly and indisputably shown.
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> Second, the respondents' undisputed realignment of funds from one point to another inevitably raised questions that, as discussed above, are ripe for constitutional scrutiny. (Citations omitted)[22]

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[22] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, (*J.* Brion, *separate concurring*) pp. 21 - 22.

I see no reason to change these views and observations.

B. The framework in reviewing acts alleged to constitute grave abuse of discretion under the Court's expanded jurisdiction.

I next address the respondents' arguments regarding the impropriety of the Court's exercise of judicial review because the issues presented before the Court could be better resolved through statutory interpretation, a process where the Executive's interpretation of the statute should be given great weight.

The present case involves the Court's expanded jurisdiction, involving the determination of whether grave abuse of discretion was committed by the government, specifically, by the Executive. Based on jurisprudence, such grave abuse must amount to lack or excess of jurisdiction by the Executive: otherwise stated, ***the assailed act must have been outside the powers granted to the Executive by law or by the Constitution, or must have been exercised in such a manner that he exceeded the power granted to him.***[23]

In examining these cases, the Court necessarily has to look at the laws granting power to the government official or agency involved, to determine whether they acted outside of their lawfully-given powers.

And to determine whether the Executive gravely abused its discretion in creating and implementing the DAP, the Court must necessarily also look at both the laws governing the budget expenditure process and the relevant constitutional provisions involving the national budget. In the course of reviewing these laws, the Court would have to compare these provisions, and in case of discrepancy between the statutory grant of authority and the constitutional standards governing them, rule that the latter must prevail.

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[23] *See*, for instance, *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78; *David v. Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, and *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

The Constitution itself directly provides guidelines and standards that must be observed in creating, implementing, and even auditing the national budget.[24] It outlines what the government can and cannot do. Necessarily, the laws involving the national budget would have to comply with these standards, and any act or law that contravenes them is unconstitutional.

a. ***The definition of savings***

The definition of savings is an aspect of the ***power of the purse*** that constitutionally belongs to Congress, *i.e.,* the power to determine the ***what***, ***how, how much*** and ***why*** of public spending,[25] and includes the determination of when spending may be stopped, as well as where these savings may be transferred. This explains why we looked at the definition of savings in the past GAAs in determining whether the DAP violated the general prohibition against transfers and augmentation in Section 25 (5), Article VI, of the 1987 Constitution.

While the power to define "savings" rightfully belongs to Congress as an aspect of its power of the purse, it is not an unlimited power; it is subject to the limitation that the national budget or the GAA is a law that must necessarily comply with the constitutional provisions governing the national budget, as well as with the jurisprudential interpretation of these constitutional provisions.

We declared, for instance, in *Sanchez v. Commission on Audit*[26] that before a transfer of savings under the narrow

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[24] See Article VI, Sections 24, 25, 27 par. 2, 29, and Article IX-D, Sections 1 - 4, 1987 Constitution.

[25] Under the Constitution, the spending power called by James Madison as "the power of the purse," belongs to Congress, subject only to the veto power of the President. The President may propose the budget, but still the final say on the matter of appropriations is lodged in the Congress.

The power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law. It can be as detailed and as broad as Congress wants it to be. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 522.

[26] 575 Phil. 428 (2008).

exception provided under Section 25 (5) may take place, there must be ***actual savings***, *viz*:

> Actual savings is a *sine qua non* to a valid transfer of funds from one government agency to another. The word "actual" denotes that something is real or substantial, or exists presently in fact as opposed to something which is merely theoretical, possible, potential or hypothetical.[27]

This jurisprudential interpretation of "actual savings" may not be violated by Congress in defining what constitutes "savings" in its yearly GAA; neither may Congress, in defining "savings," contravene the text and purpose of Section 25 (5), Article VI.

Congress, for instance, is constitutionally prohibited from creating a definition of savings that makes it possible for hypothetical, or potential sources of savings to readily be considered as savings.

That there must be "actual" savings connotes tangibility or the character of being substantially real; savings must have first been realized before it may be used to augment other items of appropriation. In this sense, actual savings carry the commonsensical notion that there must first have been an amount left over from what was intended to be spent in compliance with an item in the GAA before funds may be considered as savings. Thus, Congress can provide for the means of determining how savings are generated, but this cannot be made in such a way that would allow the transfer of appropriations from one item to another before savings have actually been realized.

Congress, in defining savings, would have to abide by Article VI, Section 25 (5), among other constitutional provisions involving the national budget, as well as the jurisprudential interpretations of the Court involving these provisions.

Additionally, note that the ***general appropriations act*** is an ***annual exercise*** by the Congress of its power to appropriate or to determine how public funds should be spent. It involves a

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[27] *Id*. at 454.

yearly act through which Congress determines how the income for a particular year may be spent.

Necessarily, the provisions regarding the release of funds, the definition of savings, or the authority to augment contained in a GAA affect only the income and items for that year. These provisions cannot be made to extend beyond the appropriations made in that particular GAA; otherwise, they would be extraneous to that particular GAA and partake of the nature of a prohibited "rider"[28] that violates the "one subject-one title" rule under Section 26 (1), Article VI[29] of the Constitution.[30]

Once the provisions on release becomes effective with respect to appropriations other than those found in the GAA in which they have been written, ***they no longer pertain to the appropriations for that year***, but to the process, rights and duties in general of public officers in the handling of funds. They would then already involve a separate and distinct subject matter from the current GAA and should thus be contained in a separate bill.[31] This is another constitutional standard that

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[28] Where the subject of a bill is limited to a particular matter, the members of the legislature as well as the people should be informed of the subject of proposed legislative measures. This constitutional provision thus precludes the insertion of riders in legislation, a rider being a provision not germane to the subject matter of the bill. *Lidasan v. Comelec*, G.R. No. L-28089, October 25, 1967, 21 SCRA 479, 510 (Fernando, *J. dissenting*).

[29] Section 26, Article VI of the 1987 Constitution provides:

Section 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

[30] Note, too, that Congress cannot include in a general appropriations bill matters that should be more properly enacted in separate legislation, and if it does that, the inappropriate provisions inserted by it must be treated as "item", which can be vetoed by the President in the exercise of his item-veto power. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 532.

[31] As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates, " it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation,

cannot be disregarded in passing a law like the GAA.[32] For the same reasons, the definition of savings cannot be made to retroact to past appropriations.

On the other hand, the Court's statutory interpretation of "unprogrammed funds," and its review of the Special Provisions for its release in the 2011 and 2012 GAAs, is in line with the constitutional command that money shall be paid out of the Treasury only in pursuance of an appropriation made by law.[33]

Likewise, while the Executive's interpretation of the provisions governing unprogrammed funds is entitled to great weight, such interpretation cannot and should not be applied when it contravenes both the text and purpose of the provision.[34]

b. *Unprogrammed Fund*

In this light, I reiterate my support for the *ponencia's* and Justice Antonio Carpio's conclusion that the use of the Unprogrammed Fund under the DAP violated the special conditions for its release.

In our main Decision, we found that the *proviso* allowing the use of sources not considered in the original revenue targets

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is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. *Philippine Constitutional Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 534.

[32] Article VI, Section 25, paragraph 2 of the 1987 Constitution requires that "No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates."

[33] Article VI, Section 29, paragraph 1 of the 1987 Constitution provides that: 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

[34] *Bautista v. Juinio*, G.R. No. 50908, January 31, 1984, 127 SCRA 329, 343.

to cover releases from the Unprogrammed Fund was not intended to prevail over the general provision requiring that revenue collections first exceed the original revenue targets.[35]

We there declared that releases from the Unprogrammed Fund through the DAP is void because they were made prematurely, *i.e.* before the original revenue targets had been reached and exceeded. We reached this conclusion because of the Republic's failure to submit any document certifying that revenue collections had exceeded original targets for the Fiscal Years 2011, 2012, and 2013. We waited for this submission even beyond the last oral arguments for the case (held in January 2014) and despite the sufficient time given for the parties to file their respective memoranda.

Instead, the respondents submitted certifications of windfall income, and argued that the proviso on releases under the Unprogrammed Fund allows the Executive to use this windfall income to fund items in the Unprogrammed Fund.

The respondent's Motion for Reconsideration argues that this kind of interpretation is absurd and renders nil the proviso allowing the use of income not otherwise considered in the original revenue targets, since actual revenue collections may be determined only by the next fiscal year.[36]

If the respondents' argument (that the Court's interpretation is absurd and cannot be implemented) were to be followed, the actual result would in fact be to render the entire provision on releases under the Unprogrammed Fund unimplementable.

It must be remembered that the general provision for releases for items under the Unprogrammed Fund requires that revenue collections must first exceed the original targets before these collections may be released. Assuming *in arguendo* that the Executive can determine this only by March 31 of the next fiscal year, then no Unprogrammed Fund could be released at all because the requirement in the general provision cannot be

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[35] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014, pp. 77 - 83.

[36] Respondents' Motion for Reconsideration, pp. 29 - 35.

timely complied with. In other words, the respondent's argument regarding the impracticality of the proviso directly impacts on, and negates, the general provision that the proviso qualifies.

To illustrate, assuming that the original revenue targets had been exceeded (without need for unexpected income), releases for items under the Unprogrammed Fund would still not be made based on the respondents' assertion that revenue collections can only be determined by the first quarter of the next fiscal year.

From the point of view of history, I do not think that this general provision on releases for items under the Unprogrammed Fund would have been in place as early as FY 2000 if it could not actually be implemented.[37] This improbability, as well as the consistent requirement that original revenue targets first be exceeded before funds may be released for items under the Unprogrammed Fund, clearly supports the Court's interpretation on the special conditions for releases under the Unprogrammed Fund. Additionally, as both the *ponencia*[38] and Justice Carpio[39] point out, total revenue targets may be determined on a quarterly basis. Thus, requiring that total revenue targets be first met before releases may be made under the Unprogrammed Funds is not as impracticable and absurd as the respondents picture them to be.

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[37] In as early as the 2000, the General Appropriations Act require, as a condition for the release of unprogrammed funds, that revenue collections first exceed the original revenue targets, in a similar language as the provisions in the 2011 and 2012 GAA, *viz*:

1. Release of Fund. The amounts herein appropriated shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution or when the corresponding funding or receipts for the purpose have been realized in the special cases covered by specific procedures in Special Provision Nos. 2, 3, 4, 5, 7, 8, 9, 13 and 14 herein: x x x

[38] *See* the *ponencia*'s discussion on pp. 18 - 21.

[39] *See* Justice Carpio's discussion on the release of the Unprogrammed Fund in pp. 10 - 11 of his Separate Opinion.

c. Qualification to the ponencia's prospective application of the Court's statutory interpretation on the release of the Unprogrammed Fund

I qualify, my concurrence, however, with respect to the *ponencia*'s conclusion that the Court's statutory interpretation of the Unprogrammed Fund provision should be applied prospectively. Prospective application, to me, is ***application in the present*** and in all future similar cases.

The Court's statutory interpretation of a law applies prospectively if it ***does not apply to actions prior*** to the Court's decision. We have used this kind of application in several cases when we opted not to apply new doctrines to acts that transpired prior to the pronouncement of these new doctrines.

In *People v. Jabinal*,[40] for instance, we acquitted a secret agent found to be in possession of an unlicensed firearm prior to the Court's pronouncement in *People v. Mapa*[41] overturning several cases that declared secret agents to be exempt from the illegal possession of firearms provisions. Jabinal committed the crime of illegal possession of firearms at a time when the prevailing doctrine exempted secret agents, but the trial court found him guilty of illegal possession of firearms after the Court's ruling in *People v. Mapa*. The Court reversed Jabinal's conviction, ruling that the *People v. Mapa* ruling cannot have retroactive application.

The Court explained the reason for the prospective application of its decisions interpreting a statute, under the following terms:

> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . ." ***The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was***

[40] 154 Phil. 565 (1974).

[41] 127 Phil. 624 (1967).

originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "legis interpretation legis vim obtinet" — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in Lucero and Macarandang was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and where he was arraigned by the trial court. It is true that the doctrine was overruled in the Mapa case in 1967, ***but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on, the old doctrine and acted on the faith thereof.*** This is especially true in the construction and application of criminal laws, where it is necessary that the punishment of an act be reasonably foreseen for the guidance of society.[42]

The ***prospective application of a statutory interpretation, however, does not extend to its application to the case in which the pronouncement or new interpretation was made.*** For this reason, we affirmed Mapa's conviction for illegal possession of firearms.[43]

In other words, the prospective application of a statutory interpretation of a law applies to the facts of ***the case in which the interpretation was made*** and to acts subsequent to this pronouncement. The prospective effect of a statutory interpretation cannot be made to apply only to acts after the Court's new interpretation; the interpretation applies also to the case in which the interpretation was laid down. Statutory interpretation, after all, is used to reach a decision on the immediate case under consideration.

For instance, in several cases[44] where we declared an administrative rule or regulation to be void for being contrary

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[42] 154 Phil. 565, 571 (1974).

[43] 127 Phil. 624 (1967).

[44] *See* for instance, the following cases: (1) *People v. Maceren*, No. L-32166, October 18, 1977, 79 SCRA 450 where the Court acquitted

to the law it seeks to implement, ***we applied our interpretation to resolve the issue in the cases before us***. We did not say that the application of our interpretation applies only to all cases after the pronouncement of illegality.

The present case poses to us the issue of whether the DAP made releases under the Unprogrammed Fund in violation of the special conditions for its release. In resolving this issue, we clarified the meaning of one of these conditions, and found that it had been violated. Thus, the Court's statutory interpretation of the release of unprogrammed funds applies to the present case, and to cases with similar facts thereafter. The release of unprogrammed funds under the DAP is void and illegal, for having violated the special conditions requisite to their release.

At this point, the funds have presumably been spent,[45] and are now being subjected to audit. Thus, it is up to the Commission

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Maceren, who was then charged with the violation of the Fisheries Administrative Order No. 84 for engaging in electro fishing. The AO No. 84 sought to implement the Fisheries Law, which prohibited "the use of any obnoxious or poisonous substance" in fishing. In acquitting Maceren, the Court held that AO no. 84 exceeded the prohibited acts in the Fisheries Law, and hence should not penalize electro-fishing. (2) *Conte v. Commission on Audit*, G.R. No. 116422, November 4, 1996, 264 SCRA 19 where the Court, in interpreting that SSS Resolution No. 56 is illegal for contravening Republic Act No. 660, and thus refused to reverse the Commission on Audit's disallowance of the petitioners' benefits under SSS Resolution No. 56. (3) *Insular Bank of Asia and Americas Employees Union v. Inciong*, 217 Phil. 629 (1984), where the Court nullified Section 2, Rule IV, Book III of the Rules to implement the Labor Code and Policy instruction No. 9 for unduly enlarging the exclusions for holiday pay in the Labor Code, and thus ordered its payment to the petitioner; and (4) *Philippine Apparel Workers Union vs. National Labor Relations Commission*, G.R. No. 50320, July 31, 1981, 106 SCRA 444 where the Court held that the implementing rules issued by the Secretary of Labor exceeded the authority it was granted under Presidential Decree No. 1123, and thus ordered the respondent employer company to pay its union the emergency cost of living allowance that PD No. 1123 requires.

[45] Ninety-six percent or ₱69.3 billion of the ₱72.11 billion Disbursement Acceleration Plan (DAP) has successfully been released to agencies and government-owned or -controlled corporations (GOCCs) as of end-December 2011. Department of Budget and Management, 96% of ₱72.11-B disbursement acceleration already released, 77.5% disbursed (Jan. 9, 2012), available at

on Audit[46] to issue the appropriate notice of disallowance for the illegal release of these funds, and to decide whether the officials behind its release should be liable for their return.[47] It is in these proceedings that the question of whether the officials

http://www.gov.ph/2012/01/09/96-of-p72-11-b-disbursement-acceleration-already-released-77-5disbursed/.

[46] Article IX-D, Section 2, paragraph 1 provides:

(1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis:

(a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

(b) autonomous state colleges and universities;

(c) other government-owned or controlled corporations and their subsidiaries; and

(d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[47] Pursuant to its mandate as the guardian of public funds, the COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property. This includes the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. ***The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.*** It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government. *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

acted in good faith or in bad faith would be relevant, as only officials who acted in bad faith in causing the unlawful release of public funds may be held liable for the return of funds illegally spent.[48]

III. Reconsideration of what constitutes an item for augmentation purposes

Upon a close re-examination of the issue, I concur with the *ponencia*'s decision to reverse its earlier conclusion that several PAPs funded by the DAP had no items, in violation of the constitutional requirement that savings may be transferred only to existing items in the GAA.

My concurrence, however, is subject to the qualifications I have made in the succeeding discussion on the need for a deficiency before an item may be augmented.

This change of position, too, does not, in any way, affect the unconstitutionality of the methods by which the DAP funds were sourced to augment these PAPs. The acts of using funds that were not yet savings to augment other items in the GAA remain contrary to the Constitution.

A. Jurisprudential standards for determining an item

For an augmentation to be valid, the savings should have been transferred to an item in the general appropriations act. This requirement reflects and is related to two other constitutional provisions regarding the use of public funds, ***first***, that no money from the public coffers may be spent except through an appropriation provided by law;[49] and ***second***, that the President may veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the items to which he does not object.[50]

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[48] See *Blaquera v. Alcala*, 356 Phil. 678 (1998); *Casal v. Commission on Audit*, 538 Phil. 634 (2006).

[49] Article VI, Section 29, paragraph 1, 1987 Constitution.

[50] Article VI, Section 27, paragraph 2, 1987 Constitution.

In my view, ***the power of augmentation cannot be exercised to circumvent or dilute these principles, such that an interpretation of what constitutes as an item for purposes of augmentation cannot be at odds with the exercise of the President's power to veto items in the GAA or Congress's exclusive, plenary power of the purse***.

As early as 1936, the Court has defined an item, *in the context of the President's veto power*, as "the particulars, the details, the distinct severable parts of the appropriation bill."[51] An appropriation, on the other hand, is the setting apart by law of a certain sum from the public revenue for a specified purpose.[52] Thus, for purposes of an item veto, an item consists of a severable part of a sum of public money set aside for a particular purpose.

This definition, however, begs the question of how to determine when a part of the appropriation law is its distinct and severable part. Subsequent cases, still pertaining to the President's veto powers, gave us the opportunity to gradually expound and develop the applicable standard. In *Bengzon v. Drilon*,[53] in particular, we described an item as an "indivisible sum of money dedicated to a stated purpose," and as "specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill."[54]

We further refined this characterization in the recent case of *Belgica v. Executive Secretary*,[55] where we pointed out that "an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item."[56]

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[51] *Bengzon v. Secretary of Justice*, 62 Phil. 912, 916 (1936).

[52] *Id*.

[53] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[54] *Id*. at 144.

[55] G.R. No. 208566, November 19, 2013.

[56] *Id*.

In the course of these succeeding cases, we have narrowed our description of the term "item" in an appropriation bill so that *(1)* it now must be indivisible; *(2)* that this indivisible amount be for a specific purpose; and *(3)* that there must exist a singular correspondence between the indivisible amount and the specified, singular purpose.

In *Nazareth v. Villar*,[57] a case we cited in *Belgica*, we even required, for augmentation purposes, that there must be an existing item, project, activity, purpose ***or*** object of expenditure with an appropriation to which the savings would be transferred.[58]

B. Our original main Decision: an expenditure category that had no appropriation cannot be augmented

Our main Decision, considering these jurisprudential standards, found that the ***allotment class*** (***i.e., the expense category of an item of appropriation, classifying it either as a Capital Outlay (CO), Maintenance and Other Operating Expense (MOOE), or Personal Services (PS)***) of several PAPs funded through the DAP had no appropriation.

Thus, it was then observed that the DAP funded the following expenditure items that had no appropriation cover, to wit: (i) personnel services and capital outlay under the DOST's Disaster Risk, Exposure, Assessment and Mitigation (DREAM) project; (ii) capital outlay for the COA's "IT Infrastructure Program and hiring of additional litigation experts"; (iii) capital outlay for the Philippine Air Force's "On-Base Housing Facilities and Communications Equipment";and (iv) capital outlay for the Department of Finance's "IT Infrastructure Maintenance Project."

It must be emphasized, at this point, that these PAPs had been funded through items found in the GAA; ***the ponencia concluded that they had no appropriation cover because these items had no allocations for the expenditure categories that the DAP funded.***

[57] G.R. No. 188635, January 29, 2013 689 SCRA 385.

[58] *Id*. at 405.

To illustrate, Department of Finance's IT Infrastructure Maintenance Project had been funded by increasing the appropriation for the "Electronic data management processing," an item which under the GAA only had funding for PS and MOOE. ***The DAP, in funding the IT Infrastructure Maintenance Project, increased appropriation for this item by adding funds for its CO, when it initially had zero funding for them. It was concluded that the DAP's act of financing the CO of an item which had no funding for CO violated the requirement that only items found in the GAA may be augmented***.

I supported this argument in the main decision because the jurisprudential standards to determine an item fit the expenditure category of a PAP. It is an indivisible sum of money, and it had been set aside for a specific, singular purpose of funding an aspect of a PAP. As I pointed out in my Separate Opinion:

> Since Congress did not provide anything for personnel services and capital outlays under the appropriation "Generation of new knowledge and technologies and research capability building in priority areas identified as strategic to National Development," then these cannot be funded in the guise of a valid transfer of savings and augmentation of appropriations.[59]

I made this conclusion bearing in mind that the jurisprudential standards apply to an allotment class, and with due consideration as well of the complexity and dynamism of the budgetary process.

The budgetary process is a complex undertaking in which the Executive and Congress are given their constitutionally-assigned tasks, neither of whom can perform the function of the other. The budget proposal comes from the Executive, which initially makes the determination of the PAPs to be funded, and by how much each allotment class (*i.e.*, the expense category of an item of appropriation, classifying it either as a Capital Outlay (CO), Maintenance and Other Operating Expense (MOOE), or Personal Services (PS)) will be funded. The proposal would then be given to the Congress for scrutiny and enactment

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[59] *Araullo v. Aquino,* G.R. No. 209287, July 1, 2014 (Brion, *J., separate*) p. 49.

into law during its legislative phase. At this point, Congress can amend the items in the budget proposal but cannot increase its total amount. These amendments may include increasing or decreasing the expense categories found in the proposal; it may, in its scrutiny of the budget, determine that certain PAPs need capital outlay or additional funds for personnel services, or even eliminate allotments for capital outlay for certain PAPs.[60]

In this light, I concluded then that when the Executive opts to augment an expenditure item that Congress had no intention of funding, then it usurped Congress's power to appropriate.

C. The motion for reconsideration: items, not their allotment classes, may be augmented

The respondents in their Motion for Reconsideration argue that the PAPs funded by the DAP had items in the GAA, and that the breakdown of its expenditure categories may be augmented even if the GAA did not fund them, so long as the PAPs themselves have items. ***The point of inquiry should be whether the PAP had an item, and not whether the expenditure category of a PAP was funded.*** In asserting this argument, the respondents pointed out that ***the Constitution requires the augmentation to an item, and not an allotment class.***

The majority supports this argument, citing the need to give the Executive sufficient flexibility in the implementation of the budget, and noting that ***equating an item to an expense category or allotment class would mean that the President can veto an expense category without vetoing the PAP.*** It could lead to situation where a PAP would continue to exist, despite having no appropriation for PS or MOOE, because the President has vetoed these expense categories.

To be sure, the provisions in the Constitution do not exist in isolation from each other; they must be construed and interpreted

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[60] Article VI, Section 25, paragraph 1 of the 1987 Constitution, JOAQUIN G. BERNAS, S.J. *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY,* 779 (2009).

in relation with other provisions and with other grants and limitations of power found in the Constitution. The Constitution, after all, provides the basic blueprint of how our government should be run, and in so doing, reflects the careful compromises and check-and-balancing mechanisms that we, as a nation, have agreed to.

As I have earlier pointed out, the power of augmentation, as an exception to the general rule against transfer of appropriations, must be construed in relation to both the President's item veto power and Congress's exclusive power to appropriate.

Considering that our interpretation of the meaning of what constitutes an item in the present case would necessarily affect what the President may veto in an appropriation law, I agree with the decision to clarify that ***the jurisprudential tests for determining an item pertains to a PAP, and not its expense categories.***

Given, too, the interrelated nature of the President's veto power and his power to augment an item in the GAA, I agree that what may be vetoed (and consequently, what may be augmented) is the total appropriation for a PAP, and not each of its allotment class. Notably, past presidential vetoes show direct vetoes of items and special provisions, not of a specific allotment class of a PAP.

Thus, ***an appropriation for a PAP is the indivisible, specified purpose for which a public fund has been set aside for.*** The President, therefore, may validly augment the PAP representing an item in an appropriation law, including its expenditure categories that initially had no funding.

To illustrate, the CO of the item "Electronic data management processing" may be augmented, even if the GAA did not allocate funds for its CO.

D. Qualification: Augmentation requires that an item must have been deficient

But while I agree with the *ponencia*'s decision to elevate the definition of an item to a particular PAP and not limit it to an expense category, I would like to point out that we are dealing with an augmentation, and not a veto – hence, ***aside from the consideration of the existence of an item, it must also be determined whether this augmented item had a deficiency***.

The very nature of an augmentation points to the existence of a deficiency. An item must have been in existence, and must demonstrably need supplementation, before it may be validly augmented. ***Without a deficiency, an item cannot be augmented, otherwise, it would violate the constitutional prohibition against money being spent without an appropriation made by law.*** An item that has no deficiency does not need additional funding; thus, the funding of an item with no deficiency could only mean that an additional PAP, not otherwise considered in the GAA nor included in the item sought to be augmented, would be funded by public funds.

This interpretation finds support and statutory authority in the definition of augmentation in the GAA of 2011 and 2012, viz:

> Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, ***which upon implementation or subsequent evaluation of needed resources, is determined to be deficient.*** In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.[61]

Thus, a PAP that has no deficiency could not be augmented. Augmenting an otherwise sufficiently-funded PAP violates the constitutional command that public money should be spent only through an appropriation made by law; too, if committed during the implementation of the 2011 and 2012 GAA, it also contravenes the definition of augmentation found therein.

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[61] Section 60 of the General Provisions of Rep. Act No. 10147 (General Appropriations Act of 2011) and Section 54 of the General Provisions of Rep. Act No. 10155 (General Appropriations Act of 2012).

At this point, it is worth noting that the items that the main decision earlier found to be objectionable for having no appropriations have two common features: ***first***, ***the augmentations massively increased their funding, and second, the massive increase went to expense categories that initially had no funding.***

Although I have earlier pointed out that these expense categories may be augmented provided that the PAP itself encounters a deficiency, ***the two commonalities in the abovementioned projects render their augmentations highly suspect. These commonalities do not indicate a deficiency, but rather, that PAPs not otherwise considered under their GAAs had been funded by the augmentations.***

Allow me to illustrate my point in more concrete queries: If the Department of Finance's Electronic data management processing is indeed an existing, deficient item under the GAA, why would its appropriation need an additional augmentation of Php 192.64 million in CO, when its original appropriation had none at all?[62]

The Court, however, is not a trier of facts, and we cannot make a determination of whether there had been a deficiency in the present case. ***In the interest of ensuring that the law***

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[62] The same query applies to the DAP's augmentation of the Commission on Audit's appropriation for "A1.a1. General Administration and Support", and the Philippine Airforce's appropriations for "A1.II.a.2 Service Support Activities, A.III.a.1 Air and Ground Combat Services, AIII.a.3 Combat Support Services and A.III.b.1 Territorial Defense Activities"

The DAP, in order to finance the "IT Infrastructure Program and hiring of additional expenses" of the Commission on Audit in 2011 increased the latter's appropriation for General Administration and Support. DAP increased the appropriation by **adding ₱5.8 million for MOOE and ₱137.9 million for CO.** The COA's appropriation for General Administration and Support, during the GAA of 2011, however, **does not contain any item for CO.**

In order to finance the Philippine Airforce's "On-Base Housing Facilities and Communication Equipment," the DAP augmented several appropriations of the Philippine Airforce **with capital outlay totaling to Php29.8 million**. **None of these appropriations had an item for CO.** (Respondents' Seventh Evidence Packet)

and the Constitution have been followed, however, I urge my colleagues in the Court to refer the records of the case to the Commission on Audit for the determination of whether the items augmented by the DAP, particularly the items previously declared unconstitutional, had been deficient prior to their augmentation.

IV. The impact of the Court's exercise of judicial review on existing laws involving the budgetary process

The majority, in denying the respondents' motion for reconsideration, points out that Section 39, Chapter 5, Book VI of the Administrative Code cannot be used to justify the transfer of funds through the DAP, because it contradicted the clear command of Section 25 (5), Article VI of the 1987 Constitution. Section 39 authorizes the President to augment any regular appropriation, *regardless of the branch of government it is appropriated to*, in clear contravention of the limitation in Section 25 (5) that transfers may be allowed only within the branch of government to which the appropriation has been made.

The practical effect of this ruling would be the need for a provision in the succeeding GAAs authorizing augmentation, if Congress would be so minded to authorize it, in accordance with the clear mandate of Section 25 (5) of the Constitution. To recall, Section 25 (5) of the Constitution requires that a law must first be in place before augmentation may be performed.

Arguably, the wordings of the Administrative Code and the GAAs of 2011 and 2012 (which, like the Administrative Code, allow the President to augment *any* appropriation) on the authority to augment funds, give credence to the respondents' contention that the President may, upon request, transfer the Executive's savings to items allotted to other branches of government.

In my view, they most certainly do not. No law may contravene the clear text and terms of the Constitution, and Section 25 (5), Article VI cannot be clearer in limiting the transfer of savings within the branch of government in which it had been generated. In other words, no cross-border transfer of funds may be allowed.

To begin with, what need is there for a law allowing for augmentation, if it may be done through more informal channels of requests? Further, a regime that allows transfers based solely on requests is inconsistent with the limited and exceptional nature of the power of augmentation. Note that the language of Article VI, Section 25 (5) begins with a general prohibition against the passage of law allowing for transfer of funds, and that the power to augment had been provided by way of exception, and with several qualifications.

Lastly, I cannot agree that past practice holds any persuasive value in legalizing the cross-border transfer of funds. Past practice, while expressive of the interpretation of the officers who implement a law, cannot prevail over the clear text and terms of the Constitution.[63]

Notably, the language of the past GAAs also show varying interpretation of Section 25 (5), Article VI of the 1987 Constitution. For instance, while the Administrative Code of 1987 contained faulty language in giving the President the authority to augment, such language was soon addressed by Congress, when as early as the 1990 GAA,[64] it granted the authority to use savings to the officials enumerated in Section 25 (5), Article VI of the 1987 Constitution, as expressed in this provision. The broader

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[63] *Supra* note 9.

[64] Section 16 of the General Provisions of Rep. Act No. 6831 (the General Appropriations Act of 1990) provides:

Section 16. Use of Savings. - The President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions under Article IX of the Constitution, and the Ombudsman are hereby ***authorized to augment any item in this Act for their respective offices from savings in other items of their respective appropriation***s: provided, that no item of appropriation recommended by the President in the budget submitted to Congress pursuant to Article VII, Section 22 of the Constitution which has been disapproved or reduced by Congress shall be restored or increased by the use of appropriations authorized for other purposes in this Act by augmentation. Any item of appropriation for any purpose recommended by the President in the budget shall be deemed to have been disapproved by Congress if no corresponding appropriation for the specific purpose is provided in this Act.

authority allowing them to augment any item in the appropriations act started only in the 2005 GAA, an unconstitutional practice in the annual GAA that should now be clipped.

V. Operative Fact Doctrine

With the DAP's unconstitutionality, the next point of inquiry logically must be on this ruling's impact on the projects and programs funded under the DAP. This is only logical as our ruling necessarily must carry practical effects on the many sectors that the DAP has touched.

A. The application of the doctrine of operative fact to the DAP

As I earlier pointed out, a declaration of unconstitutionality of a law renders it void: the unconstitutional law is not deemed to have ever been enacted, and no rights, obligations or any effect can spring from it.

The doctrine of operative fact mitigates the harshness of the declared total nullity and recognizes that the unconstitutional law, prior to the declaration of its nullity, was an operative fact that the citizenry followed or acted upon. This doctrine, *while maintaining the invalidity of the nullified law*, provides for an exceptional situation that recognizes that ***acts done in good faith and in reliance of the law prior to its invalidity***, are effective and can no longer be undone.[65]

A lot of the misunderstanding exists in this case in considering the doctrine, apparently because of the term "good faith" and the confusion between the present case and future cases seeking to establish the criminal, civil or administrative liability of those who participated in the DAP affair.

The respondents, particularly, demonstrate their less than full understanding of the operative fact doctrine, as shown by their claim that it has nothing to do with persons who acted

[65] See *Municipality of Malabang, Lanao del Sur v. Benito*, 137 Phil. 360 (1969), *Serrano de Agbayani v. Philippine National Bank*, 148 Phil. 443, 447 - 448 (1971)., *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008, 548 SCRA 485.

pursuant to the DAP prior to its declaration of invalidity and that "the court cannot load the dice, so to speak, by disabling possible defenses in potential suits against the so-called 'authors, proponents and implementors.'"[66]

The respondents likewise decry the use of the terms "good faith" and "bad faith" which may be exploited for political ends, and that any negation of good faith violates the constitutional presumption of innocence. Lastly, the nullification of certain acts under the DAP does not operate to impute bad faith on the DAP's authors, proponents and implementors.

A first point I wish to stress is that the doctrine is about the ***effects*** of the declaration of the unconstitutionality of an act, law or measure. It is not about the unconstitutionality itself or its underlying reasons. The doctrine in fact was formulated ***to address the situation of those who acted under an invalidated law prior to the declaration of invalidity***.

Thus, while as a general rule, an unconstitutional law or act is a nullity and carries no effect at all, the operative fact doctrine holds that its ***effects*** may still be recognized (although the law or act remains invalid) with respect to those who had acted and relied in good faith on the unconstitutional act or law prior to the declaration of its invalidity; to reiterate what I have stated before, the invalidated law or act was then an operative fact and those who relied on it in good faith should not be prejudiced as a matter of equity and justice.[67] The key essential word under the doctrine is the ***fact of "reliance"***; "good faith" only characterizes the reliance made.

It was in this manner and under this usage that "good faith" came into play in the present case. The clear reference point of the term was to the "reliance" by those who had acted under the unconstitutional act or law prior to the declaration of its

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[66] Respondents' Motion for Reconsideration, p. 36.

[67] *See* Kristin Grenfell, California Coastal Commission: Retroactivity of a Judicial Ruling of Unconstitutionality, 14 Duke Envtl. L & Policy F. 245 (Fall 2003).

invalidity. To again hark back to what has been mentioned above, all these refer to the "effects" of an invalidated act or law. No reference at all is made of the term "good faith" (as used in the operative fact doctrine sense) to whatever criminal, civil or administrative liability a participant in the DAP may have incurred for his or her participation.[68]

Two reasons explain why the term "good faith" could not have referred to any potential criminal, civil or administrative liability of a DAP participant.

The ***first reason*** is that the determination of criminal, civil or administrative liability is not within the jurisdiction of this Court to pass upon *at this point*. The Court therefore has no business speaking of good faith in the context of any criminal, civil or administrative liability that might have been incurred; in fact, the Court never did. If it did at all, it was to explain that good faith in that context is out of place in the present proceedings because the issue of criminal, civil or administrative liability belongs to other tribunals in other proceedings. If the respondents still fail to comprehend this, I can only say – *there can be none so blind as those who refuse to see.*

The ***second reason***, related to the first, is that cases touching on the criminal, civil or administrative liabilities incurred for participation in the DAP affair are cases that have to wait for another day at a forum other than this Court. These future cases may only be affected by our present ruling in so far as we clarified *(1)* the effects of an unconstitutional statute on those who ***relied in good faith,*** under the operative fact doctrine, on the unconstitutional act prior to the declaration of its unconstitutionality; and *(2)* that the authors, proponents and implementors of the unconstitutional DAP are not among those who can seek cover behind the operative fact doctrine as they ***did not rely on the unconstitutional act*** prior to the declaration of its nullity. They were in fact the parties responsible for establishing and implementing the DAP's unconstitutional terms

[68] *See Araullo v. Aquino,* G.R. No. 209287, July 1, 2014 (Brion, *J.*, *separate*) pp. 55 - 58.

and in these capacities, cannot rely on the unconstitutionality or invalidity of the DAP as reason to escape potential liability for any unconstitutional act they might have committed.

For greater certainty and in keeping with the *strict meaning of the operative fact doctrine*, the authors, proponents and implementors of the DAP are those who ***formulated, made or approved*** the DAP as a budgetary policy instrument, including in these ranks the sub-cabinet senior officials who effectively recommended its formulation, promulgation or approval and who actively participated or collaborated in its implementation. They cannot rely on the terms of the DAP as in fact they were its originators and initiators.

In making this statement, the Court is not "loading the dice," to use the respondents' phraseology, against the authors, proponents and implementors of the DAP. We are only clarifying the scope of application of the operative fact doctrine by initially defining where and how it applies, and to whom, among those related to the DAP, the doctrine would and would not apply. By so acting, the Court is not cutting off possible lines of defenses that the authors, proponents and implementors of the unconstitutional DAP may have; it is merely stating a legal consequence of the constitutional invalidity that we have declared.

Apparently, the good and bad faith that the respondents mention and have in mind relate to the potential criminal, civil, and administrative cases that may be filed against the authors, proponents and implementors of the unconstitutional DAP. Since these are not issues in the petitions before us but are cases yet to come, we cannot and should not be heard about the presence of good faith or bad faith in these future cases. If I mentioned at all specific actions indicating bad faith, it was only to balance my statement that the Court should not be identified with a ruling that seemingly clears the respondents from liabilities for the constitutional transgression we found.[69]

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[69] *Araullo v. Aquino,* G.R. No. 209287, July 1, 2014 (Brion, *J., separate*) p. 58.

I reiterate the above points by quoting the pertinent portion of my Separate Opinion:

> Given the jurisprudential meaning of the operative fact doctrine, a first consideration to be made under the circumstances of this case is the application of the doctrine: **(1)** to the programs, works and projects the DAP funded in relying on its validity; **(2)** to the officials who undertook the programs, works and projects; and **(3)** to the public officials responsible for the establishment and implementation of the DAP.
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> With respect to the programs, works and projects, **I fully agree with *J.* Bersamin** that the ***DAP-funded programs, works and projects*** can no longer be undone; practicality and equity demand that they be left alone as they were undertaken relying on the validity of the DAP funds at the time these programs, works and projects were undertaken.
>
> The ***persons and officials***, on the other hand, ***who merely received or utilized the budgetary funds in the regular course*** and without knowledge of the DAP's invalidity, would suffer prejudice if the invalidity of the DAP would affect them. Thus, they should not incur any liability for utilizing DAP funds, unless they committed criminal acts in the course of their actions other than the use of the funds in good faith.
>
> The doctrine, on the other hand, cannot simply and generally be extended to the ***officials who never relied on the DAP's validity and who are merely linked to the DAP because they were its authors and implementors***. A case in point is the case of the DBM Secretary who formulated and sought the approval of NBC No. 541 and who, as author, cannot be said to have relied on it in the course of its operation. Since he did not rely on the DAP, ***no occasion exists to apply the operative fact doctrine to him and there is no reason to consider his "good or bad faith" under this doctrine.***
>
> This conclusion should apply to all others whose only link to the DAP is as its authors, implementors or proponents. If these parties, for their own reasons, would claim the benefit of the doctrine, then the burden is on them to prove that they fall under the coverage of the doctrine. As claimants seeking protection, they must actively show their good faith reliance; good faith cannot rise on its own and self-levitate from a law or measure that has fallen due to its unconstitutionality. Upon failure to discharge the burden, then the

general rule should apply – the DAP is a void measure which is deemed never to have existed at all.

The good faith under this doctrine should be ***distinguished from the good faith considered from the perspective of liability***. It will be recalled from our above finding that the respondents, through grave abuse of discretion, committed a constitutional violation by withdrawing funds that are not considered savings, pooling them together, and using them to finance projects outside of the Executive branch and to support even the PDAF allocations of legislators.

When transgressions such as these occur, the ***possibility for liability for the transgressions committed*** inevitably arises. It is a basic rule under the law on public officers that public accountability potentially imposes ***a three-fold liability – criminal, civil and administrative against a public officer***. A ruling of this kind can only come from a tribunal with direct or original jurisdiction over the issue of liability and where the good or bad faith in the performance of duty is a material issue. This Court is not that kind of tribunal in these proceedings as we merely decide the question of the DAP's constitutionality. If we rule beyond pure constitutionality at all, it is only to expound on the question of the consequences of our declaration of unconstitutionality, in the manner that we do when we define the application of the operative fact doctrine. Hence, any ruling we make implying the existence of the presumption of good faith or negating it, is only for the purpose of the question before us – the constitutionality of the DAP and other related issuances.

To go back to the case of Secretary Abad ***as an example***, we cannot make any finding on good faith or bad faith ***from the perspective of the operative fact doctrine*** since, as author and implementor, he did not rely in good faith on the DAP.

Neither can we make any pronouncement on his criminal, civil or administrative liability, *i.e., based on his performance of duty,* since we do not have the jurisdiction to make this kind of ruling and we cannot do so without violating his due process rights. In the same manner, given our findings in this case, we should not identify this Court with a ruling that seemingly clears the respondents from liabilities for the transgressions we found in the DBM Secretary's performance of duties when the evidence before us, at the very least, shows that his actions negate the presumption of good faith that he would otherwise enjoy in an assessment of his performance of duty.

To be specific about this disclaimer, aside from the many admissions outlined elsewhere in the Opinion, there are indicators showing that the DBM Secretary might have established the DAP knowingly aware that it is tainted with unconstitutionality.[70]

B. The application of the operative fact doctrine to the PAPs that relied on the DAP and to the DAP's authors, proponents and implementors, is not obiter dictum

While I agree with the *ponencia*'s discussion of the application of the operative fact doctrine to the case, I cannot agree with its characterization of our ruling as an *obiter dictum*.

An unconstitutional act is not a law. It confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.[71]

In this light, the Court's declaration of the unconstitutionality of several aspects of the DAP necessarily produces two main effects: (1) it voids the acts committed through the DAP that are unconstitutional; and (2) the PAPs that have been funded or benefitted from these void acts are likewise void.

By way of exception, the operative fact doctrine recognizes that the DAP's operation had consequences, which would be iniquitous to undo despite the Court's declaration of the DAP's unconstitutionality.

Necessarily, the Court would have to specify the application of the operative fact doctrine, and in so doing, distinguish between the two main effects. In other words, given the unconstitutionality's two effects, the Court, logically, would have to distinguish which of these effects remains recognized by the operative fact doctrine.

This is the reason for the discussion distinguishing between the applicability of the operative fact doctrine to PAPs that

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[70] *Araullo v. Aquino,* G.R. No. 209287, July 1, 2014 (Brion, *J., separate*) pp. 56 - 58.

[71] This is otherwise known as the void *ab initio* doctrine, first used in the case of *Norton v. Shelby County*, 118 US 425, 6 S. Ct. 1121, 30 L. Ed. 178 (1886).

relied in good faith to the DAP's existence, and its non-application to the DAP's authors, proponents and implementors. The operative fact doctrine, given its nature and definition, only applies to the PAPs, but cannot apply to the unconstitutional act itself. As the doctrine cannot apply to the act, with more strong reason can it not apply to the acts of its authors, proponents and implementors of the unconstitutional act.

It is in this sense and for these reasons that the Court distinguished between the PAPs that benefitted from the DAP, and the DAP's authors, proponents and implementors.

It is also in this sense that the Court pointed out that the DAP's authors, proponents and implementors cannot claim any reliance in good faith; the operative fact doctrine does not apply to them, as the nature of their participation in the DAP's conception is antithetical to any good faith reliance on its constitutionality.

Without the Court's discussion on the operative fact doctrine and its application to the case, the *void ab initio* doctrine applies to nullify both the acts and the PAPs that relied on these acts. Hence, the Court's discussion on the operative fact doctrine is integral to the Court's decision – it provides how the effect of the Court's declaration of unconstitutionality would be implemented. The discussion is not, as the *ponente* vaguely described it, an "*obiter* pronouncement."

In sum, I concur with the *ponencia*'s legal conclusions denying the following issues raised by the motions for reconsideration:

(1) That the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances are UNCONSTITUTIONAL for violating Section 25(5), Article VI, of the 1987 Constitution and the doctrine of separation of powers, namely:

(a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of withdrawn unobligated allotments and unreleased appropriations as savings prior to the

end of the fiscal year and without complying with the statutory definition of savings contained in the General Appropriations Acts; and

(b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive.

(2) That the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets is VOID and ILLEGAL for non-compliance with the conditions provided in the relevant General Appropriations Acts.

Too, I join the *ponencia* in reversing its former conclusion that several projects, activities and programs funded by the DAP had not been covered by an item in the GAAs, but subject to the qualification that these items should be audited by the Commission on Audit to determine whether there had been a deficiency prior to the augmentation of said items. This is in line with my discussion that an item needs to be deficient before it may be augmented.

My concurrence in the *ponencia* is further qualified by my discussions on: *(1)* the prospective application of our statutory interpretation on the release of unprogrammed funds; and *(2)* the application of the operative fact doctrine as an integral aspect in reaching the Court's decision.

For all these reasons, I join the majority's conclusion, but subject to my opposition against the conclusion that the Court's discussion on the operative fact doctrine is *obiter dictum*, as well as to the qualification that an item must first be found to be deficient before it may be augmented.

Further, in light of my recommendations as regards the implementation of the Court's ruling on the release of unprogrammed funds and augmentation***, I recommend that we provide the Commission on Audit with a copy of the Court's decision and the records of the case, and to direct it to immediately conduct the necessary audit of the projects funded by the DAP***.

CONCURRING OPINION

LEONEN, *J.*:

I concur, in the result, with the denial of the Motions for Reconsideration filed by petitioners. I concur with the partial grant of the Motion for Reconsideration filed by respondents clarifying (a) the concept of appropriation item as differentiated from allotment classes and (b) the effect of the interpretation of the statutory provisions on the use of unprogrammed funds. I vote to add that there are other situations when unprogrammed funds can be used without regard to whether the total quarterly or annual collections exceed the revenue targets.

I clarify these positions in this separate opinion.

I

The General Appropriations Act authorizes, not compels, expenditures

The General Appropriations Act is the law required by the Constitution to authorize expenditures of public funds for specific purposes.[1] Each appropriation item provides for the limits of the amount that can be spent by any office, agency, bureau or department of government.[2] The provision of an appropriation item does not require that government must spend the full amount appropriated. In other words, the General Appropriations Act provides authority to spend; it does not compel actual expenditures.

By providing for the maximum that can be spent per appropriation item, the budget frames a plan of action. It is enacted on the basis of projections of what will be needed within a future time frame — that is, the next year in the case of the General Appropriations Act. Both the Constitution and the law provide that the President initially proposes projects, activities,

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[1] CONST., art. VI, SEC. 29(1).

[2] CONST., art. VI, SEC. 29(1).

and programs to meet the projected needs for the next year.[3] Congress scrutinizes the proposed budget and is the constitutional authority that passes the appropriations act that authorizes expenditures of the entire budget through appropriation items[4] subject to the flexibilities provided in the Constitution,[5] existing law, and in the provisions of the General Appropriations Act[6] not inconsistent with the Constitution or existing law.[7]

To read the Constitution as requiring that every appropriation item be spent only in the full and exact amount provided in the appropriation item — and nothing less than the full amount — is absurd. Reality will not always be as predicted by the President and Congress as they deliberated on the budget. Obviously, reality is far richer than our plans.

The Constitution should be read as having intended reasonable outcomes on the basis of the values congealed in the text of its provisions enlightened by the precedents of this court.

Thus, there is nothing unconstitutional or illegal when the President establishes his priorities. He is expected to exhort and provide fiscal discipline for executive offices within his control.[8] He may, in line with public expectations, do things more effectively, economically, and efficiently. This is inherent in the executive power vested on him.[9] He is expected to fully

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[3] CONST., ART. VII, SEC. 22; Exec. Order No. 292 (1987), book I, ch. 3, SEC. 11; Exec. Order No. 292 (1987), book VI, CH. 2, SEC. 3; Exec. Order No. 292 (1987), book VI, ch. 1, SEC. 2(3).

[4] CONST., ART. VI, SECS. 24 and 26.

[5] CONST., ART. VI, SEC. 25(5).

[6] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, SEC. 54; Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, SEC. 53; Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, SEC. 60.

[7] *See also* 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, ART. 2, SECS. 162-166.

[8] CONST., ART. VII, SEC. 17.

[9] CONST., ART. VII, SEC. 1.

and faithfully execute all laws.[10] This constitutional flexibility, while not unlimited, is fundamental for government to function.

Disagreements as to the priorities of a President are matters of political accountability. They do not necessarily translate into juridical necessities that can invoke the awesome power of judicial review. This court sits to ensure that political departments exercise their discretions within the boundaries set by the constitution and our laws.[11] We do not sit to replace their political wisdom with our own.[12]

II

Withholding unobligated allotments is not unconstitutional per se

Setting priorities generally means that the President decides on which project, activity, or program within his department will be funded first or last within the period of effectivity of the appropriation items.

The Constitution provides for clear delineations of authority. Congress has the power to authorize the budget.[13] However, it is the President that generally decides on when and how to allocate funds, order or encourage agencies to obligate, and then cause the releases of the funds to contracted entities.[14] The process of obligation, which includes procurement as well as the requirements for the payment, or release of funds may be further limited by law.[15]

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[10] CONST., ART. VII, SEC. 5.

[11] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936) [Per *J.* Laurel, *En Banc*].

[12] *Id*.

[13] CONST., ART. VI, SEC. 24.

[14] As discussed in my concurring opinion to the main decision, "The president's power or discretion to spend up to the limits provided by law is inherent in executive power." J. Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> 7 [Per *J.* Bersamin, *En Banc*]. *See also* CONST., ART. VII, SEC. 17.

[15] *See for example* Rep. Act No. 9184 (2003).

Thus, withholding unobligated allotments is not unconstitutional per se. It can be done legitimately for a variety of reasons. The revenues expected by government may not be forthcoming as expected. The office or agency involved may not have the capacity to spend due to organizational problems, corruption issues, or even fail to meet the expectations of the President himself. In my view, the President can withhold the unobligated allotment until the needed corrective measures are done within the office or agency. With the amount withheld, the President may also ensure that the other appropriations items are fully funded as authorized in the general or in any supplemental appropriations act.

This flexibility is subject to several constitutional constraints. First, he can only spend for a project, activity, or program whose expenditure is authorized by law.[16] Second, he cannot augment any appropriations item within his department unless it comes from savings.[17]

III

Withheld unobligated allotments are not necessarily "savings"

Savings is a term that has a constitutionally relevant meaning. The constitutional meaning of the term savings allows Congress to further refine its details.

To underscore the power of Congress to authorize appropriations items, the Constitution prohibits their augmentation. There is no authority to spend beyond the amounts set for any appropriations item.[18] Congress receives information from the executive as to the projected revenues prior to passing a budget. Members of Congress deliberate on whether they will agree to the amounts allocated per project, activity, or program and thus, the extent of their concurrence with the priorities set by the

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[16] CONST., ART. VI, SEC. 29(1).

[17] CONST., ART. VI, SEC. 25(5).

[18] CONST., ART. VI, SEC. 25(1).

President with the latter's best available estimates of what can happen the following year. The authorities that will eventually spend the amounts appropriated cannot undermine this congressional power of authorization.

However, the Constitution itself provides for an exception. Appropriated items may be augmented but only from savings and only if the law authorizes the heads of constitutional organs or departments to do so.[19] It is in this context that savings gains constitutional relevance.

From a constitutional perspective, I view "savings" as related only to the privilege to augment. As a constitutional concept, it cannot be endowed with a meaning that will practically undermine the constitutional grant of power to Congress to limit and authorize appropriations items. There must be a reasonable justification for the failure of the spending authority to spend the amount declared as savings from an appropriated item. This reasonable justification must be based on causes external to the authority deciding when to declare actual savings.

On the other hand, given that the power of Congress to determine when the heads of constitutional organs and departments may exercise the prerogative of augmentation,[20] Congress, too, may define the limits of the concept of savings but only within the parameters of its constitutional relevance.

In the General Appropriations Acts of 2011,[21] 2012,[22] and 2013,[23] savings was defined as:

> Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for

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[19] CONST., ART. VI, SEC. 25(5).

[20] *See* CONST., ART. VI, SEC. 25(5).

[21] Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, SEC. 60.

[22] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, SEC. 54.

[23] Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, SEC. 53.

which the appropriation is authorized; (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Currently, the definition of savings in the General Appropriations Act of 2014[24] is as follows:

Sec. 68. **Meaning of Savings and Augmentation**. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

Definitely, the difference between the actual expenditure and the authorized amount appropriated by law as a result of the completion of a project is already savings that can be used to augment other appropriations items within the same department.

Analogously, the expense category called Personnel Services (PS) within an appropriations item also creates savings during the year. Thus, for various reasons, when an executive office

[24] Rep. Act No. 10633, GAA Fiscal Year 2014, General Provisions, SEC. 68.

is able to hire less than the authorized plantilla funded by the appropriation item, the President may declare the compensation and benefits corresponding to the unfilled items after any payroll period as "savings" that can be used for augmentation.[25] Certainly, the monies that should have been paid for personnel services for positions that were unfilled for a certain period will no longer be used until the end of the year. Similarly, there is savings when the actual expenditure for Maintenance and Other Operating Expenses (MOOE) is less than what was planned for a given period. There is no need to wait until the end of the year to declare savings for purposes of augmentation.

The justification for projects, activities, and programs to be considered as "finally discontinued" and "abandoned" must be clear in order that their funds can be considered savings for purposes of augmentation. Thus, in my Concurring Opinion in the main Decision of this case, I clarified that this should be read in conjunction with the Government Accounting and Auditing Manual (GAAM)[26] provisions that state:

> **Sec. 162. Irregular expenditures.**- The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set, is deemed irregular. An anomalous transaction which fails to

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[25] See the definition of savings under the general provisions of the General Appropriations Act in a given year.

[26] The Government Accounting and Auditing Manual (GAAM) was issued pursuant to Commission on Audit Circular No. 91-368 dated December 19, 1991. The GAAM is composed of three volumes: Volume I – Government Auditing Rules and Regulations; Volume II – Government Accounting; and Volume III – Government Auditing Standards and Principles and Internal Control System. In 2002, Volume II of the GAAM was replaced by the New Government Accounting System as per Commission on Audit Circular No. 2002-002 dated June 18, 2002.

follow or violate appropriate rules of procedure is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas the former in violation of applicable rules and regulations other than the law.

Sec. 163. Unnecessary expenditures.- The term "unnecessary expenditures" pertains to expenditures which could not pass the test of prudence or the obligation of a good father of a family, thereby non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This could also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditure must be considered in determining whether or not the expenditure is necessary.

Sec. 164. Excessive expenditures.- The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity or exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

Sec. 165. Extravagant expenditures.- The term "extravagant expenditures" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious.

Sec. 166. Unconscionable expenditures.- The term "unconscionable expenditures" signifies expenses without a knowledge or sense of what is right, reasonable and just and not guided or restrained by conscience. These are unreasonable and immoderate expenses incurred in violation of ethics and morality by one who does not have any feeling of guilt for the violation.

The President's power to suspend a project *in order to declare savings for purposes of augmentation* may be statutorily granted in Section 38 of the Revised Administrative Code, but it cannot be constitutional unless such grounds for suspension are reasonable

and such reasonable grounds are statutorily provided. Under the present state of our laws, it will be reasonable when read in relation to the GAAM. As I explained in my Concurring Opinion[27] to the main Decision:

> Of course, there are instances when the President must mandatorily withhold allocations and even suspend expenditure in an obligated item. This is in accordance with the concept of "fiscal responsibility": a duty imposed on heads of agencies and other government officials with authority over the finances of their respective agencies.
>
> Section 25 (1) of Presidential Decree No. 1445, which defines the powers of the Commission on Audit, states:
>
> Section 25. Statement of Objectives. –
>
> . . . .
>
> (1) To determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged;
>
> . . . .
>
> This was reiterated in Volume I, Book 1, Chapter 2, Section 13 of the Government Accounting and Auditing Manual, which states:
>
> **Section 13. The Commission and the fiscal responsibility of agency heads. –** One primary objective of the Commission is to determine whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged.
>
> The head of an agency and all those who exercise authority over the financial affairs, transaction, and operations of the agency, shall take care of the management and utilization of government resources in accordance with law and regulations, and safeguarded against loss or wastage to ensure efficient, economical, and effect operations of the government.
>
> *Included in fiscal responsibility is the duty to prevent irregular, unnecessary, excessive, or extravagant expenses.* Thus:

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[27] *J.* Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> [Per *J.* Bersamin, *En Banc*].

Section 33. Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power to disallow such expenditures. The Commission shall promulgate such auditing and accounting rules and regulations as shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property.

The provision authorizes the Commission on Audit to promulgate rules and regulations. But, this provision also guides all other government agencies *not to make any expenditure that is "irregular, unnecessary, excessive, or extravagant."* The President should be able to prevent unconstitutional or illegal expenditure based on any allocation or obligation of government funds.

. . . .

The President can withhold allocations from items that he deems will be "irregular, unnecessary, excessive or extravagant." ***Viewed in another way, should the President be confronted with an expenditure that is clearly "irregular, unnecessary, excessive or extravagant," it may be an abuse of discretion for him not to withdraw the allotment or withhold or suspend the expenditure***

For purposes of augmenting items — as opposed to realigning funds — the President should be able to treat such amounts resulting from otherwise "irregular, unnecessary, excessive or extravagant" expenditures as savings.[28] (Emphasis in the original, citations omitted)

IV

"Appropriation covers" does not always justify proper augmentation

Fundamental to a proper constitutional exercise of the prerogative to augment is the existence of an appropriations item.[29]

But it is not only the existence of an appropriation item that will make augmentation constitutional. It is likewise essential

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[28] *J.* Leonen, concurring opinion in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 < http://sc.judiciary.gov.ph/jurisprudence/2014/july2014/209287_leonen.pdf> 15-18 [Per *J.* Bersamin, *En Banc*].

[29] CONST., ART. VI, SEC. 25(5).

that it can be clearly and convincingly shown that it comes from legitimate savings in a constitutional and statutory sense.[30] In other words, having appropriation covers to the extent of showing that the item being funded is authorized is not enough. For each augmentation, the source in savings must likewise be shown.[31]

This is why constitutional difficulties arose in the kind of pooled funds done under the Disbursement Allocation Program (DAP). There was the wholesale assertion that all such funds came from savings coming from slow moving projects. This is not enough to determine whether the requirements of constitutionality have been met. For there to be valid savings of every centavo in the pooled funds, there must be a showing (a) that the activity has been completed, finally discontinued and abandoned;[32] and (b) why such activity was finally discontinued and abandoned and its consistency with existing statutes.[33] Pooled funds make it difficult, for purposes of this determination, to make this determination. DAP may be the mechanism to ensure that items that needed to be augmented be funded in order to allow efficiencies to occur. However, this mechanism should be grounded and limited by constitutional acts. The source of the funds in the pool called DAP should be shown to have come from legitimate savings in order that it can be used to augment appropriations items.

The amount of augmentation is not constitutionally limited when there are legitimate savings and statutory authority to modify an appropriations item.[34] Furthermore, there is a difference

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[30] CONST., ART. VI, SEC. 25(5).

[31] CONST., ART. VI, SEC. 25(5).

[32] Rep. Act No. 10155, GAA Fiscal Year 2012, General Provisions, SEC. 54. *See also* Rep. Act No. 10352, GAA Fiscal Year 2013, General Provisions, SEC. 53 and Rep. Act No. 10147, GAA Fiscal Year 2011, General Provisions, SEC. 60.

[33] *See also* 1 GOVERNMENT ACCOUNTING AND AUDITING MANUAL Book III, Title 3, ART. 2, SECS. 162-166; Exec. Order No. 292, book VI, CH. 5, SEC. 38.

[34] CONST., ART. VI, SEC. 25(5).

between an appropriations item and the expense categories within these items. The Constitution only mentions that the entire appropriations item may be augmented from savings.[35] Neither the Constitution nor any provision of law limits the expense category that may be used within the item that will be augmented. Thus, I agree with the ponencia that when an item is properly augmented, additional funds may be poured into Personnel Services, MOOE, or Capital Outlay even if originally the appropriations item may not have had a provision for any one of these expense categories.

V

Augmentation may only be within a constitutional department

The Solicitor General strains the meaning of Article VI, Section 25(5) to the point of losing its spirit.[36] He proposes that augmentation by the President is allowable when there is a request coming from another constitutional organ or department.[37] He parses the provision to show that one sentence is meant to contain two ideas: first, the transfer of appropriation and second, the power to augment.

This is a novel idea that is not consistent with existing precedents. Besides, such interpretation does not make sense in the light of the fundamental principle of separation of powers and the sovereign grant to Congress to authorize the budget. The proposed interpretation undermines these principles to the point of rendering them meaningless.

Contemporaneous construction by the political departments aids this court's exercise of its constitutional duty of judicial review. Contemporaneous construction does not replace this power.

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[35] CONST., art. VI, sec. 25(5).

[36] Respondents' Motion for Reconsideration, pp. 25-29.

[37] *Id*. at 26.

Parenthetically, the Solicitor General asserts in his Motion for Reconsideration that:

77. This understanding of the Constitution is not exclusive to the political branches of government. Documentary evidence exists to show that the Supreme Court itself has (1) approved the allocation of amounts from its savings to augment an item within the Executive and (2) sought funds from the Executive for transfer to the Judiciary. These practices validate respondents' theory of benign and necessary interdepartmental augmentations.

78. On 17 July 2012, when Justice Antonio T. Carpio was Acting Chief Justice, the Supreme Court *en banc* issued a Resolution in A.M. No. 12-7-14-SC, which reads:

The Court Resolved to APPROVE the allocation, from existing savings of the Court, of the following amounts for the construction of courthouses:

1.	Manila Hall of Justice (120 courts)	₱1,865,000,000.00
2.	Cebu Court of Appeals Building	266,950,000.00
3.	Cagayan de Oro Court of Appeals Building	251,270,000.00
	TOTAL	₱2,383,220,000.00

The foregoing amounts are hereby set aside and earmarked for the construction costs of the said buildings.

79. As can be gleaned from the above Resolution, the Supreme Court earmarked its existing savings of ₱1.865 billion to augment the ₱100 million budget for the Manila Hall of Justice, which is an item (B.I.d.—"Civil Works and Construction Design for the Manila Hall of Justice") in the 2012 budget of the Department of Justice-Office of the Secretary, which is within the Executive Department. This is an example of the benign and necessary interaction between interdependent departments. Obviously, the Supreme Court has an interest in the construction of Halls of Justice, and no one can say that this cross-border augmentation was a means by which the judiciary tried to co-opt the Executive.

80. Moreover, on 05 March 2013, the Supreme Court *en banc* issued a Resolution in A.M. No. 13-1-4-SC, the dispositive portion of which reads:

WHEREFORE, the Court hereby requests the Department of Budget and Management to approve the transfer of the amount of One Hundred Million Pesos (100,000,000.00) which was included in the DOJ-JUSIP budget for Fiscal Year 2012 for the Manila Hall of Justice to the budget of the Judiciary, subject to existing budget policies and procedures, to be used for the construction of the Malabon Hall of Justice.

81. In the above Resolution, the Supreme Court requested the DBM to transfer the P100 million in the budget of the DOJ for the Manila Hall of Justice to the Judiciary, which it intended to utilize to fund the construction of the Malabon Hall of Justice. This means that the P100 million allocation will be taken away from the Manila Hall of Justice, which has an item in the 2012 GAA under the Executive, and used instead to fund the construction of the Malabon Hall of Justice, which has no item in the 2012 or the 2013 GAA.

82. When the petitions were filed and while they were being heard, Chief Justice Sereno, in a letter dated 23 December 2013, informed the DBM that the Supreme Court was withdrawing its request to realign the ₱100 million intended for the Manila Hall of Justice to the budget of the Judiciary. These two instances show both cross-border transfers on the part of the Supreme Court—(a) the augmentation of an item in the Executive from funds in the Judiciary; and (b) the "transfer" of funds from the Executive to the Supreme Court, whether or not for purposes of augmentation.

83. With all due respect, this is by no means a disapprobation of the Honorable Court. But it does serve to highlight the fact that the Honorable Court's practice was based on an understanding of the constitutional provision that coincides with the government's.[38] (Citations omitted)

I concur with Justice Carpio's observations in his Separate Opinion resolving the present Motions for Reconsideration. Earmarking savings for a particular purpose without necessarily spending it is not augmentation.[39] It is a prerogative that can be exercised within the judiciary's prerogative of fiscal autonomy. With respect to the alleged request to allocate funds from the

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[38] *Id.* at 26-28.

[39] *See J.* Carpio, separate opinion, pp. 9-10.

Department of Justice for the judiciary's construction of the Malabon Halls of Justice, suffice it to say that this resolution was not implemented. The Chief Justice withdrew the request seasonably. This withdrawal was confirmed by a Resolution issued by this court. Decisions of this court En Banc are subject to limited reconsideration. Reconsideration presupposes that this court also has the ability to correct itself in a timely fashion.

The more salient question is why both the President and Congress insist that the items for renovation, repair and construction of court buildings should not be put under the judiciary. Instead it is alternatively provided in the General Appropriations Act under the budget of either the Department of Justice or the Department of Public Works and Highways. Both of these agencies are obviously under the executive.[40] ***This produces excessive entanglements between the judiciary and the executive and undermines the constitutional requirement of independence. In my view, these appropriation items are valid but its location (under the executive) is unconstitutional. These items should be read and deemed a part of the judiciary's budget.***

VI

The liabilities of any party were not issues in these cases

I fully concur with the ponencia's characterization that the pronouncements of good faith or bad faith of authors, proponents, and implementors of the DAP are obiter. ***Obiter dictum is part of the flourish of writing an opinion. They serve the purpose of elucidation but should not be read as binding rule of the case (ratio decidendi). This is so because the parties did not litigate them as issues. They are not essential to arrive at a resolution of the issues enumerated by this court as fundamental to reach the disposition of this case***.[41]

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[40] CONST., ART. VII, Sec. 17.

[41] *The City of Manila v. Entote*, 156 Phil. 498, 510-511 (1974) [Per *J.* Muñoz Palma, First Division], citing *Morales v. Paredes*, 55 Phil. 565, 567

There was neither a declaration of illegality or unconstitutionality of any of or all of the 116 projects identified to have benefitted from the DAP mechanism nor was there a declaration that the DAP mechanism per se was unconstitutional. That the administration chose to stop or suspend all these projects was not called for by the decision. The dispositive of the decision (*fallo*) only declared acts or practices under the DAP[42] as unconstitutional, *e.g.* cross-border transfers, funding of programs not covered by any appropriation under the General Appropriations Act, and the declaration of savings without complying with the requirements under the General Appropriations Act. Unless all the DAP projects were considered by the executive as having elements of the unconstitutional acts, the decision to stop or suspend was theirs alone.

Anxiety for the party losing a case is natural. These anxieties are normally assuaged by better legal advice. Sobriety follows good legal advice. After all, our opinions form part of jurisprudence, which are principal sources for the bar to give good legal advice and the bench to decide future cases. Bad legal advice given to the President as to the import of our rulings may have dire consequences, but it does not change what we have declared or proclaimed. We can only do so much in our opinions.

[Per *J.* Ostrand, *En Banc*], states: "A remark made, or opinion expressed, by a judge, in his decision upon a cause, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, is an *obiter dictum* and as such it lacks the force of an adjudication and is not to be regarded as such."

[42] (a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and without complying with the statutory definition of savings contained in the General Appropriations Acts;

(b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive; and

(c) The funding of projects, activities and programs that were not covered by any appropriation in the General Appropriations Act.

VII

Release of unprogrammed funds

The Office of the Solicitor General points out that this court is mistaken in ruling that:

> [R]evenue collections must exceed the total of the revenue targets stated in the Budget for Expenditures and Sources of Financing (BESF) before expenditures under the Unprogrammed Fund can be made.[43] (Citation omitted)

The Office of the Solicitor General argues that in reality, "the government's total revenue collections have never exceeded the total original revenue targets"[44] and that the proper interpretation is:

> [E]xcess revenue collections refer to the excess of actual revenue collections over estimated revenue targets, not the difference between revenue collections and expenditures.[45]

In my Concurring Opinion to the July 1, 2014 Decision, I initially agreed with the majority decision that "[s]ourcing the DAP from unprogrammed funds despite the original revenue targets not having been exceeded was invalid"[46] referred to total revenue targets, not revenue target per income class.

The interpretation of the article on Unprogrammed Funds covered by the period when DAP was in place deserves closer scrutiny. The resolution of whether authorization to spend income ***only*** upon a showing that ***total*** collected revenues exceed ***total*** targeted revenues requires examination of the entire structure of the article and not only its first provision.

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[43] Respondent's Motion for Reconsideration, p. 29.

[44] *Id*.

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

[46] *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer. html?file=/jurisprudence/2014/july2014/209287.pdf> 77 [Per *J.* Bersamin, *En Banc*].

In the original Decision, we focused on the first special provision. In the FY 2011 General Appropriations Act, this provision states:

Special Provision(s)

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release thepertinent [sic] appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.[47]

However, this is not the only special provision for this appropriations item.

A

Use of savings in programmed funds for purposes enumerated for Unprogrammed Funds

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[47] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV. Similar provisions are found in art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012 and ART. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013. In the 2014 GAA, the purposes and specific allocations are found in ART. [X]LVI, Annex A and the special provisions are in ART. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014. For FY 2011, total Unprogrammed Funds authorized was ₱66.9 B; in 2012, ₱152.8 B; in 2013, ₱117.6 B; and in 2014, ₱139.9.

The article on Unprogrammed Funds is generally the appropriations item that allows expenditures from income arising from collected revenues exceeding those targeted. Starting from the General Appropriations Act of 2012, the applicable laws consistently no longer included the clause, *"including savings generated from programmed appropriations for the year,"* found in the General Appropriations Act of 2011 from the common first special provision. This manifests the clear intention that none of the *savings from programmed appropriation* will be used for any of the purposes enumerated in the article on Unprogrammed Funds. These purposes are:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Strategic Government Reforms
3. Support to Foreign-Assisted Projects
4. General Fund Adjustments
5. Support for Infrastructure Projects and Social Programs
6. Support for Pre-School Education
7. Collective Negotiation Agreement
8. Payment of Total Administrative Disability Pension[48]

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[48] In the 2012 GAA, only four (4) of the eight (8) purposes enumerated in the 2011 GAA were retained. The 2012 GAA also introduced two (2) purposes not contemplated in the 2011 GAA. The authorized purposes in the 2012 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. Disaster Risk Reduction and Management
6. Debt Management Program

The 2013 GAA retained the four (4) purposes retained by the 2012 GAA from the 2011 GAA and reinstated a fifth purpose from the 2011 GAA. It retained one (1) of the two (2) purposes introduced by the 2012 GAA and introduced two new purposes. The authorized purposes in the 2013 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments

Starting FY 2012, therefore, expenditures from the purposes enumerated in Unprogrammed Funds using "savings" from programmed appropriations would be void for lack of statutory authority to spend for such purposes in such manner.

Use of excess revenue collections

Generally, revenue collections in excess of targeted revenues cannot be considered as "savings" in the concept of Article VI, Section 25(5) of the Constitution. However, the disposition of these funds may also be provided in the General Appropriations Act or in a supplemental budget. This is consistent with the basic principle that Congress authorizes expenditures of public funds as found in Article VI, Section 29(1) of the Constitution, to wit:

(1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

Thus, apart from the first special provision, the ninth provision states:

9. Use of Income. In case of deficiency in the appropriations for the following business-type activities, departments, bureaus,

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4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Payment of Total Administrative Disability Pension
8. People's Survival Fund

The 2014 GAA retained all the purposes indicated in the 2013 GAA and added three (3) others. The authorized purposes in the 2014 GAA were:

1. Budgetary Support to Government-Owned and/or –Controlled Corporations
2. Support to Foreign-Assisted Projects
3. General Fund Adjustments
4. Support for Infrastructure Projects and Social Programs
5. AFP Modernization Program
6. Debt Management Program
7. Risk Management Program
8. Disaster Relief and Mitigation Fund
9. Reconstruction and Rehabilitation Program
10. Total Administrative Disability Pension
11. People's Survival Fund

offices and agencies enumerated hereunder and other agencies as may be determined by the Permanent Committee are hereby authorized to use their respective income collected during the year. Said income shall be deposited with the National Treasury, chargeable against Purpose 4 - General Fund Adjustments, to be used exclusively for the purposes indicated herein or such other purposes authorized by the Permanent Committee, as may be required until the end of the year, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292, s. 1987:

DEPARTMENT / AGENCY	SOURCE OF INCOME	PURPOSE
ENVIRONMENT AND NATURAL RESOURCES		
National Mapping and Resource Information Authority	Proceeds from Sales of Maps and Charts	For reproduction of maps and charts and printing publications
FINANCE		
Bureau of Customs	Sale of Accountable Forms	For the printing of accountable forms
FOREIGN AFFAIRS		
Office of the Secretary	Issuance of Passport Booklets	For the procurement of additional passport booklets
JUSTICE		
National Bureau of Investigation	Urine Drug Testing and DNA Analysis	For the purchase of reagents, drug testing kits and other consumables
	Issuance of Clearance	For the procurement of additional materials and payment of rentals for the laser photo system used in the issuance of NBI clearance
TRANSPORTATION AND COMMUNICATIONS		
Land Transportation Office	Issuance of Driver's License, Plates, Tags and Stickers	For the production of additional driver's

license, plates, tags and stickers[49]

The deficiency referred to in this special provision refers to the inadequacy of the amount already appropriated. The purpose of addressing the deficiency is to ensure that the income generating activities of the offices and agencies continue. It grants flexibility in as much as the actual demand for the government services enumerated might not be exactly as predicted. *To achieve this flexibility, this special provision does not require that there be a showing that total collected revenue for all sources of funds exceed total targeted revenue.*

The tenth special provision for Unprogrammed Funds in the General Appropriations Act of 2011 more specifically addresses the use of excess income for revenue generating agencies and offices:

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[49] Rep. Act No. 10147, GAA Fiscal Year 2011, art. XLV, Unprogrammed Fund, Special Provision(s) (compare with provisions in the rest of the GAAs). Exec. Order No. 292 (1987), book VI, ch. 5, SEC. 35, contains the procedure for expenditures from Lump Sum Appropriations, thus:

SECTION 35. Special Budgets for Lump-Sum Appropriations.—Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.

10. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2011 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 4 - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.[50]

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[50] Rep. Act No. 10147, GAA Fiscal Year 2011, ART. XLV (compare with similar provisions in GAAs for 2012, 2013, 2014).

The counterpart provision in the 2012 GAA reads:

4. Use of Excess Income. Agencies collecting fees and charges as shown in the FY 2012 Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3 – General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292; PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines issued by the DBM.

The counterpart provision in the 2013 GAA reads:

4. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2013 BESF may be allowed to use their income realized and deposited with the National Treasury, in excess of the collection targets presented in the BESF, chargeable against Purpose 3-General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this provision shall be subject to the guidelines issued by the DBM.

The counterpart provision in the 2014 GAA reads:

5. Use of Excess Income. Departments, bureaus and offices authorized to collect fees and charges as shown in the FY 2014 BESF may be allowed to use their income realized and deposited with the National Treasury: PROVIDED, That said income shall be in excess of the collection targets

This special provision specifically authorizes the use of the excess in collected revenue over targeted revenue for the collecting agency. This flexibility in the budget allows government to continually ensure that income-generating activities of government do not come to a standstill for lack of funds. More than an expense, this funding can be seen as an investment into the operations of these special offices and agencies.

Again, similar to the ninth special provision, there is no need to show that the total revenue collections of government exceed their submitted total targeted collections.

Other than these statutory authorities, Unprogrammed Funds or revenue collected in excess of the submitted targets may not be used to augment programed appropriations. Any such expenditure will be void for lack of statutory authority required by the Constitution.

B

Apart from these special provisions, the absolute and universal requirement that expenditures from Unprogrammed Funds will only be allowed when the total revenue collected exceeds the submitted targets may not be supported even by the text of the first special provision.

The text of the first special provision reads: "Release of Funds . . . shall be released only when the revenue collections exceed the original revenue targets submitted by the President[.]"[51] Revenue targets are in plural form. The provision also fails to

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presented in the BESF: PROVIDED, FURTHER, That it shall be chargeable against Purpose 3: PROVIDED, FURTHERMORE, That it shall only be used to augment their respective current appropriations during the year: PROVIDED, FINALLY, That said income shall not be used to augment Personnel Services appropriations including payment of discretionary and representation expenses.

Releases from said income shall be subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292.

Implementation of this provision shall be subject to the guidelines issued by the DBM.

[51] Rep. Act No. 10147, GAA Fiscal Year 2011, ART. XLV, Special Provision(s)(1).

qualify that the basis for reckoning whether the excess is the ***total*** "original revenue target[s]". The absence of the adjective "total" is palpable and unmistakable.

The ponencia proposes that we discover an unequivocal intent on the part of this statute that the authority to spend for any purpose covered by this title (Unprogrammed Funds) is present only when the actual revenue collection exceeds the total revenue target submitted by the President. While this interpretation may have its own reasonable merit, it is not the only interpretation possible. There can be other interpretations that would be fully supported by the text of the provision. There can be other interpretations which will not require that this court make generalizations and surmises.

At best, therefore, the universal qualifier for the use of Unprogrammed Funds may just be one interpretation; but, it is not the only one.

The text of this statutory provision can also be reasonably interpreted as allowing expenditures for the purposes enumerated when it can be shown that the actual revenue collection ***in an income source exceeds the target for that source*** as submitted by the President in his National Expenditure Program. There is no need to show that the ***total*** revenue collection exceeds the ***total*** revenue targets.

This alternative interpretation, apart from being plainly supported by the text, is also reasonable to achieve discernable state interests.

For instance, different departments and agencies are responsible for varying sources of revenue. The Bureau of Internal Revenue ensures a viable tax collection rate. The Bureau of Customs oversees the collection of tariffs and other customs duties. Each of these agencies is faced with their own ambient and organizational challenges. The leadership styles of those given charge of these offices will be different resulting in varying results in terms of their collection efforts. Similarly, the problems of government financial institutions (GFIs) and government-owned and controlled

corporations (GOCC) may require different interventions to improve their profitability and efficiencies. Thus, when each of these agencies and offices actually exceed their revenue collection over their targets is dependent on a lot of factors, many of which are not common to all of them.

It is as reasonable to infer that Congress may have intended to provide incentives — and its corresponding flexibility — to the President as his team is able to solve the challenges of each of the agencies involved in generating revenues. It is reasonable also to assume that members of Congress were pragmatic and that they expected that the problems of collection (including leakages) in some agencies, such as the Bureau of Customs, would be difficult to solve as compared with GFIs and GOCCs. Thus, authority to spend for the purposes enumerated in the article on Unprogrammed Funds will depend on the success of each of the agencies involved.

The provision in question is sufficiently broad to carry either or both interpretations: (a) targeted revenues refer to *total* revenues, and (b) that targeted revenues refer to revenues *per income class*. Both can be supported by their own set of reasons, but the first option — that of considering targeted revenues as *total* revenues — carries the potential of being absurd. Thus, the real question is whether it is within our power to choose which interpretation is the more pragmatic and sound policy. This decision is different from whether the provision itself or its application is consistent with a provision in the Constitution. It is a choice of the wiser or more politically palatable route. It is a question of wisdom.

Judicial review should take a more deferential temperament when the interpretation of a statutory provision involves political choices. At the very least, these questions should be deferred until parties in the proper case using the appropriate remedy are able to lay down the ambient facts that can show that one interpretation adopted by government respondents clearly and categorically runs afoul of any law or constitutional provision.

In my separate opinion in *Umali v. Commission on Elections*,[52] I noted:

> Our power to strike down an act of co-equal constitutional organs is not unlimited. When we nullify a governmental act, we are required "to determine whether 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."
>
> No less than three constitutional organs have interpreted the law and the relevant provision of the Constitution. I am of the view that our power to strike down that interpretation should not be on the basis of the interpretation we prefer. Rather, Governor Umali should bear the burden of proving that the interpretation of the law and the Constitution in the actual controversy it presents is not unreasonable and not attended by any proven clear and convincing democratic deficit. We should wield the awesome power of judicial review awash with respectful deference that the other constitutional organs are equally conscious of the mandate of our people through our Constitution.[53] (Emphasis and citation omitted)

When judicial review is being applied to check on the powers of other constitutional departments or organs, it should require deference as a constitutional duty. This proceeds from the idea that the Constitution, as a fundamental legal document, contains norms that should also be interpreted by other public officers as they discharge their functions within the framework of their constitutional powers.

To this extent, I qualify my concurrence to the declaration that the expenditures under DAP from Unprogrammed Funds is void without conditions. I suspend judgment for the more appropriate case where facts have been properly adjudicated in the proper forum. Perhaps, this will be a certiorari or prohibition

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[52] G.R. No. 203974, April 22, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/ jurisprudence/2014/april2014/203974.pdf> [Per *J.* Velasco, Jr., *En Banc*].

[53] *J.* Leonen, dissenting opinion in *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/ 203974_leonen.pdf> 8 [Per *J.* Velasco, Jr., *En Banc*].

case arising out of an actual disallowance of the Commission on Audit of an expenditure claimed under Unprogrammed Funds.

Assuming without conceding that the interpretation that Unprogrammed Funds can only be sourced from the excess over the *total* revenue targets is a new construction on a statutory provision. It is not a finding that there is a constitutional violation. Thus, fairness to concerned parties requires that it be prospective in its effect. In this regard, I concur with the ponencia's view that the majority's interpretation should be prospective without conceding the points I have made in this Opinion.

My concurrence relating to the three acts and practices under the DAP that are considered unconstitutional and the application of the operative fact doctrine for third-party beneficiaries remains vigorously unaltered.

C

During the deliberation in this case, Justice Carpio suggested that the value of the article on Unprogrammed Funds was to assure all actors in our economy that government will not print money just to be able to make expenditures. Printing money or increasing money supply generally has inflationary effects. That is, the prices of all goods and services may increase not because of the scarcity of these items but because there is a surplus of currency floating in the economy. Thus, the title on Unprogrammed Funds require actual revenue collections vis-à-vis a fixed base such as submitted revenue targets that cannot be further modified.

I agree. The entire discussion thus far requires *actual* collection and an excess of these *actual* collections over revenue targets.

Justice Carpio next pointed out the consequences of the special provision on reportorial requirements. This provides:

> 11. Reportorial Requirement. The DBM shall submit to the House Committee on Appropriations and the Senate Committee on Finance separate quarterly reports stating the releases from the Unprogrammed Fund, the amounts released and purposes thereof, and the recipient departments, bureaus, agencies or offices, GOCCs and GFIs, including

the authority under which the funds are released under Special Provision No. 1 of the Unprogrammed Fund.[54]

I agree that this special provision debunks the Solicitor General's argument that Unprogrammed Funds using the interpretation of this court's original majority opinion will never be used because it can only be assessed the following year. The provision clearly allows use of the funds within the year because it contemplates quarterly reports, which it requires to be made with Congress.

However, I regret that I cannot agree that this special provision implies a resolution of the basis for construing what targeted revenue means. On a quarterly basis, government can assess either total quarterly revenue or quarterly revenue per income source. There is also need for quarterly reports in view of the ninth and tenth special provision in the article on Unprogrammed Funds in the General Appropriations Act of 2011, which are similar to the corresponding special provisions in subsequent General Appropriations Acts.

ACCORDINGLY, with these clarifications, I vote:

(a) to **DENY** the Motions for Reconsideration of petitioners for lack of merit;

(b) to **PARTIALLY GRANT** the Motion for Reconsideration of respondents in relation to the concept of expense classes as opposed to appropriation items; and

(c) with respect to Unprogrammed Funds, to **DECLARE** that the use of Unprogrammed Funds to augment programmed appropriations is **VOID** unless consistent with the special provisions. However, this interpretation on the use of Unprogrammed Funds should be applied prospectively.

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[54] Rep. Act No. 10147, GAA Fiscal Year 2011, ART. XLV, Special Provision(s)(11). Similar provisions are found in Art. XLVI of Rep. Act No. 10155, GAA Fiscal Year 2012, ART. XLV of Rep. Act No. 10352, GAA Fiscal Year 2013, and ART. XLVI of Rep. Act No. 10633, GAA Fiscal Year 2014.

CONCURRING AND DISSENTING OPINION

DEL CASTILLO, *J.*:

I submit this Opinion to reiterate the views that I expressed in my July 1, 2014 *Concurring and Dissenting Opinion* (July 1, 2014 Opinion, for brevity) in the context of the present arguments raised by petitioners in their Motion for Partial Reconsideration and by respondents in their Motion for Reconsideration as well as to address the new arguments raised therein.

I.

Petitioners argue that the augmentations made by the Executive Department under the DAP relative to specific items in the pertinent GAAs are many times over their original appropriations. Hence, they pray that the Court declare as unconstitutional and illegal the expenditures under the DAP which were used (1) to augment appropriation items over and above the maximum amount recommended by the President in the proposed budget submitted to Congress or (2) to augment appropriation items which were not deficient.

I find the argument unavailing. I already addressed this argument in my July 1, 2014 Opinion and reiterate, thus:

> [T]he view has been expressed that the DAP was used to authorize the augmentations of items in the GAA many times over their original appropriations. While the magnitude of these supposed augmentations are, indeed, considerable, it must be recalled that Article VI, Section 25(5) of the Constitution purposely did not set a limit, in terms of percentage, on the power to augment of the heads of offices:
>
> MR. SARMIENTO. I have one last question. Section 25, paragraph (5) authorizes the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, the President, the President of the Senate to augment any item in the General Appropriations Law. Do we have a limit in terms of percentage as to how much they should augment any item in the General Appropriations Law?

MR. AZCUNA. The limit is not in percentage but "from savings." So it is only to the extent of their savings.

Consequently, even if Congress appropriated only one peso for a particular PAP in the appropriations of the Executive Department, and the Executive Department, thereafter, generated savings in the amount of ₱1B, it is, theoretically, possible to augment the aforesaid one peso PAP appropriation with ₱1B. The intent to give considerable leeway to the heads of offices in the exercise of their power to augment allows this result.

Verily, the sheer magnitude of the augmentation, without more, is not a ground to declare it unconstitutional. For it is possible that the huge augmentations were legitimately necessitated by the prevailing conditions at the time of the budget execution. On the other hand, it is also possible that the aforesaid augmentations may have breached constitutional limitations. But, in order to establish this, the burden of proof is on the challenger to show that the huge augmentations were done with grave abuse of discretion, such as where it was merely a veiled attempt to defeat the legislative will as expressed in the GAA, or where there was no real or actual deficiency in the original appropriation, or where the augmentation was motivated by malice, ill will or to obtain illicit political concessions. Here, none of the petitioners have proved grave abuse of discretion nor have the beneficiaries of these augmentations been properly impleaded in order for the Court to determine the justifications for these augmentations, and thereafter, rule on the presence or absence of grave abuse of discretion.

The Court cannot speculate or surmise, by the sheer magnitude of the augmentations, that a constitutional breach occurred. Clear and convincing proof must be presented to nullify the challenged executive actions because they are presumptively valid. Concededly, it is difficult to mount such a challenge based on grave abuse of discretion, but it is not impossible. It will depend primarily on the particular circumstances of a case, hence, as previously noted, the necessity of remedial legislation making access to information readily available to the people relative to the justifications on the exercise of the power to augment.

Further, assuming that the power to augment has become prone to abuse, because it is limited only by the extent of actual savings, then the remedy is a constitutional amendment; or remedial legislation subjecting the power to augment to strict conditions or guidelines

as well as strict real time monitoring. Yet, it cannot be discounted that limiting the power to augment, based on, say, a set percentage, would unduly restrict the effectivity of this fiscal management tool. As can be seen, these issues go into the wisdom of the subject constitutional provision which is not proper for judicial review. As it stands, the substantial augmentations in this case, without more, cannot be declared unconstitutional absent a clear showing of grave abuse of discretion for the necessity of such augmentations are presumed to have been legitimate and *bona fide*.[1]

II.

I maintain that the President has the power to finally discontinue slow-moving projects pursuant to (1) Section 38,[2] Chapter 5, Book VI, of the Administrative Code and (2) the General Appropriations Act (GAA) definition of "savings,"[3] which implicitly recognizes the power to finally discontinue or abandon a work, activity or purpose. This power was impliedly exercised by the President, under National Budget Circular No. (NBC) 541, by ordering the withdrawal of unobligated allotments from slow-moving projects in order to spur economic growth. Absent proof to the contrary and the undisputed claim that this program,

[1] Citations omitted.

[2] SECTION 38. Suspension of Expenditure of Appropriations. — Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized **to** suspend or **otherwise stop further expenditure** of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees. (Emphasis supplied)

[3] [S]avings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrances which are**: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized;** (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost. (Emphasis supplied) [*See* Sections 60, 54 and 52 of the 2011, 2012 and 2013 GAAs, respectively]

indeed, led to economic growth, the "public interest" standard, which circumscribes the power to permanently stop expenditure under Section 38, must be deemed satisfied. Hence, with the final discontinuance of slow-moving projects, "savings" were thereby generated, pursuant to the GAA definition of savings.

I noted, however, in my July 1, 2014 Opinion that, because the wording of NBC 541 is so broad, the amount of withdrawn allotments that may be reissued or ploughed back to the same project may be: (1) zero, (2) the same amount as the unobligated allotment previously withdrawn in that project, (3) more than the amount of the unobligated allotment previously withdrawn in that project, and (4) less than the amount of the unobligated allotment previously withdrawn in that project. In scenario 4, a constitutional breach would be present because the project would effectively not be finally discontinued but its withdrawn allotment would be treated as "savings."

I now further clarify that when I stated that the "project would effectively not be finally discontinued" under scenario 4, I speak about the **net effect** of the operation of NBC 541. It should be noted that the withdrawal of the unobligated allotments as well as the reissuance or realignment, as the case may be, of the aforesaid allotments were done on a quarterly basis. Thus, the net effect of the operation of NBC 541 can only be determined after the period of its implementation. This is the reason why an in-depth or intensive factual determination is necessary prior to a declaration that scenario 4 occurred and, thus, breached the statutory definition of "savings" under the pertinent GAAs. Stated another way, it is equally possible that the net effect of the operation of NBC 541 would not result to the breach of the statutory definition of "savings." It depends on the pivotal issue of whether the project, from which the unobligated allotments were withdrawn, was finally discontinued or abandoned; a matter which must be established and determined in a proper case. As I discussed in my July 1, 2014 Opinion, this ambiguity, in determining when a project is finally discontinued or abandoned, is a weak point of the GAAs which opens the doors to abuse:

[T]he third requisite of the first type of "savings" in the GAA deserves further elaboration. Note that the law contemplates, among others, the final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized. Implicit in this provision is the recognition of the possibility that the work, activity or purpose may be finally discontinued or abandoned. The law, however, does not state (1) who possesses the power to finally discontinue or abandon the work, activity or purpose, (2) how such power shall be exercised, and (3) when or under what circumstances such power shall or may be exercised.

Under the doctrine of necessary implication, it is reasonable to presume that the power to finally discontinue or abandon the work, activity or purpose is vested in the person given the duty to implement the appropriation (*i.e.*, the heads of offices), like the President with respect to the budget of the Executive Department.

As to the manner it shall be exercised, the silence of the law, as presently worded, allows the exercise of such power to be express or implied. Since there appears to be no particular form or procedure to be followed in giving notice that such power has been exercised, the Court must look into the particular circumstances of a case which tend to show, whether expressly or impliedly, that the work, activity or purpose has been finally abandoned or discontinued in determining whether the first type of "savings" arose in a given case.

This lack of form, procedure or notice requirement is, concededly, a weak point of this law because (1) it creates ambiguity when a work, activity or purpose has been finally discontinued or abandoned, and (2) it prevents interested parties from looking into the government's justification in finally discontinuing or abandoning a work, activity or purpose. Indubitably, it opens the doors to abuse of the power to finally discontinue or abandon which may lead to the generation of illegal "savings." Be that as it may, the Court cannot remedy the perceived weakness of the law in this regard for this properly belongs to Congress to remedy or correct. The particular circumstances of a case must, thus, be looked into in order to determine if, indeed, the power to finally discontinue or abandon the work, activity or purpose was validly effected.

In sum, I maintain that Sections 5.4, 5.5 and 5.7 of NBC 541 are only partially unconstitutional and illegal insofar as they (1) allowed the withdrawal of unobligated allotments from slow-

moving projects, which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as "savings."

The majority now acknowledges that the withdrawal of the unobligated allotments under NBC 541 may have effectively suspended or permanently stopped the expenditures on slow-moving projects, but maintains that the reissuance of the withdrawn allotments to the original programs or projects is a clear indication that the same were not discontinued or abandoned. In effect, the majority concedes that scenario 4 may have occurred in the course of the implementation of the DAP, however, the majority maintains that the withdrawal of the unobligated allotments under NBC 541 remains unconstitutional.

I disagree.

As I noted in my July 1, 2014 Opinion, whether scenario 4 (or scenarios 1 to 3 for that matter) *actually* occurred requires a factual determination that was not litigated in this case. Thus, it is premature to make a sweeping generalization that the "withdrawal and transfer of unobligated allotments remain unconstitutional." Instead, a more limited declaration that, to repeat, Sections 5.4, 5.5 and 5.7 of NBC 541 are only partially unconstitutional and illegal, insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects, which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as "savings," is *apropos*. A distinction must be made between the infirmity of the wording of NBC 541 and what actually happened during the course of the implementation of the DAP. The Court cannot assume facts that were not established in this case.

The majority further states that "withdrawals of unobligated allotments pursuant to NBC No. 541 which shortened the availability of appropriations for MOOE and capital outlays, and those which were transferred to PAPs that were not determined to be deficient, are still constitutionally infirm and invalid."

I disagree for two reasons.

First, there appears to be no evidence which sufficiently established that there were transfers made to PAPs that were not deficient. As previously discussed, the sheer magnitude of augmentations does not, by itself, establish that the augmentations were illegal or unconstitutional.

Second, as I extensively discussed in my July 1, 2014 Opinion, the shortening of the availability of the MOOE and capital outlays, through the withdrawal of the unobligated allotments, does not automatically result to illegality or unconstitutionality:

I do not subscribe to the view that the provisions in the GAAs giving the appropriations on Maintenance and Other Operating Expenses (MOOE) and Capital Outlays (CO) a life-span of two years prohibit the President from withdrawing the unobligated allotments covering such items.

The availability for release of the appropriations for the MOOE and CO for a period of two years simply means that the work or activity may be pursued within the aforesaid period. It does not follow that the aforesaid provision prevents the President from finally discontinuing or abandoning such work, activity or purpose, through the exercise of the power to permanently stop further expenditure, if public interest so requires, under the second phrase of Section 38 of the Administrative Code.

It should be emphasized that Section 38 requires that the power of the President to suspend or to permanently stop expenditure must be expressly abrogated by a specific provision in the GAA in order to prevent the President from stopping a specific expenditure:

> SECTION 38. *Suspension of Expenditure of Appropriations*. – **Except as otherwise provided in the General Appropriations Act** and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees. (Emphasis supplied)

This is the clear import and meaning of the phrase "except as otherwise provided in the General Appropriations Act." Plainly, there is nothing in the afore-quoted GAA provision on the availability for release of the appropriations for the MOOE and CO for a period of two years which expressly provides that the President cannot exercise the power to suspend or to permanently stop expenditure under Section 38 relative to such items.

That the funds should be made available for two years does not mean that the expenditure cannot be permanently stopped prior to the lapse of this period, if public interest so requires. For if this was the intention, the legislature should have so stated in more clear and categorical terms given the *proviso* (*i.e.*, "except as otherwise provided in the General Appropriations Act") in Section 38 which requires that the power to suspend or to permanently stop expenditure must be expressly abrogated by a provision in the GAA. In other words, we cannot imply from the wording of the GAA provision, on the availability for release of appropriations for the MOOE and CO for a period of two years, that the power of the President under Section 38 to suspend or to permanently stop expenditure is specifically withheld. A more express and clear provision must so provide. The legislature must be presumed to know the wording of the *proviso* in Section 38 which requires an express abrogation of such power.

It should also be noted that the power to suspend or to permanently stop expenditure under Section 38 is not qualified by any timeframe for good reason. Fraud or other exceptional circumstances or exigencies are no respecters of time; they can happen in the early period of the implementation of the GAA which may justify the exercise of the President's power to suspend or to permanently stop expenditure under Section 38. As a result, such power can be exercised at any time even a few days, weeks or months from the enactment of the GAA, when public interest so requires. Otherwise, this means that the release of the funds and the implementation of the MOOE and CO must continue until the lapse of the two-year period even if, for example, prior thereto, grave anomalies have already been uncovered relative to the execution of these items or their execution have become impossible.

An illustration may better highlight the point. Suppose Congress appropriates funds to build a bridge between island A and island B in the Philippine archipelago. A few days before the start of the

project, when no portion of the allotment has yet to be obligated, the water level rises due to global warming. As a result, islands A and B are completely submerged. If the two-year period is not qualified by Section 38, then the President cannot order the permanent stoppage of the expenditure, through the withdrawal of the unobligated allotment relative to this project, until after the lapse of the two-year period. Rather, the President must continue to make available and authorize the release of the funds for this project despite the impossibility of its accomplishment. Again, the law could not have intended such an absurdity.

In sum, the GAA provision on the availability for release and obligation of the appropriations relative to the MOOE and CO for a period of two years is not a ground to declare the DAP invalid because the power of the President to permanently stop expenditure under Section 38 is not expressly abrogated by this provision. Hence, the President's order to withdraw the unobligated allotments of slow-moving projects, pursuant to NBC 541 in conjunction with Section 38, did not violate the aforesaid GAA provision considering that, as previously discussed, the power to permanently stop expenditure was validly exercised in furtherance of public interest, absent sufficient proof to the contrary.

III.

I also maintain that the phrase "to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year" in Section 5.7.3 of NBC 541 is void insofar as it allows the transfer of the withdrawn allotments to non-existent programs and projects in the 2012 GAA. This violates Article VI, Section 29(1)[4] of the Constitution and Section 54[5] of the 2012 GAA. However, it is

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[4] Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

[5] Section 54. x x x

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. **In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized by this Act.** (Emphasis supplied)

premature, at this time, to conclude that, indeed, such transfer of savings to non-existent programs or projects did occur under the DAP on due process grounds.

The majority, however, in its July 1, 2014 Decision, used the DOST's DREAM project and the augmentation to the DOST-PCIEETRD to illustrate that there were augmentations of non-existent programs or projects under the DAP. I already noted in my July 1, 2014 Opinion that this finding is premature and violates respondents' right to due process because these specific issues were not litigated in a proper case, as they were merely deduced from the evidence packets submitted by the Solicitor General.

In their Motion for Reconsideration, respondents, through the Solicitor General, now explain at length why these augmentations have appropriation covers. In particular, they argue that the general prohibition on transfer of appropriations applies only to appropriation items and not allotment classes (or expense categories, *i.e.*, PS, MOOE and CO).

The majority upholds the Solicitor General's interpretation of item of appropriation versus allotment class. I am in accord with the majority's position, for the reasons given by the majority. However, I note that, while the discussion on transfer of allotment classes and augmentation of appropriation items are consistent with judicial precedents, this should be understood in relation to the existing standards of efficiency, effectivity and economy in budget execution under the Administrative Code, as I extensively discussed in my July 1, 2014 Opinion. The exercise of the vast power to realign and to augment should be understood as being circumscribed by existing constitutional and legislative standards and limitations as well as safeguards that Congress may institute in the future, consistent with the Constitution, in order to prevent the abuse or misuse of this power.

I further note that the majority states that "whether the 116 DAP funded projects had appropriation cover and were validly augmented, require factual determination which is not within the scope of the present consolidated petitions under Rule 65."

I am in accord with this finding. As I stated in my July 1, 2014 Opinion:

> [T]he Solicitor General impliedly argues that, despite the defective wording of Section 5.7.3 of NBC 541, no non-existent program or project was ever funded through the DAP. Whether that claim is true necessarily involves factual matters that are not proper for adjudication before this Court. In any event, petitioners may bring suit at the proper time and place should they establish that non-existent programs or projects were funded through the DAP by virtue of Section 5.7.3 of NBC 541.

IV.

The Solicitor General reiterates his novel theory that cross-border transfer of savings is allowed under Article VI, Section 25(5)[6] of the Constitution because this provision merely prohibits unilateral inter-departmental transfer of savings, and not those where the other department requested for the funds.

I maintain that this theory is unavailing.

As I explained at length in my July 1, 2014 Opinion, the subject constitutional provision is clear, absolute and categorical. If we allow the relaxation of this rule, to occasionally address certain exigencies, it will open the doors to abuse and defeat the laudable purposes of this provision that is an integral component of the system of checks and balances under our plan of government. Again, the proper recourse is for the other departments and constitutional bodies to request for additional funds through a supplemental budget duly passed and scrutinized by Congress.

The Solicitor General points out that even this Court has (1) approved the allocation of amounts from its savings to augment an item within the Executive, and (2) sought funds from the

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[6] No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

Executive for transfer to the Judiciary, to establish that cross-border transfer of savings is a long-standing practice not just of past administrations but by the Court as well.

In my July 1, 2014 Opinion, commenting on Article VI, Section 25(5), I stated:

> [T]he principal motivation for the inclusion of the subject provision in the Constitution was to prevent the President from consolidating power by transferring appropriations to the other branches of government and constitutional bodies in exchange for undue or unwarranted favors from the latter. Thus, the subject provision is an integral component of the system of checks and balances under our plan of government. **It should be noted though, based on the broad language of the subject provision, that the check is not only on the President, even though the bulk of the budget is necessarily appropriated to the Executive Department, because the other branches and constitutional bodies can very well commit the afore-described transgression although to a much lesser degree.** (Emphasis supplied)

The prohibition on cross-border transfer of savings applies to all the branches of government and constitutional bodies, including the Court. If the Solicitor General thinks that the aforesaid transfer of funds involving the Court violates the subject constitutional provision, then the proper recourse is to have them declared unconstitutional, as was done in this case. But, certainly, it cannot change the clear and unequivocal language of the constitutional prohibition on cross-border transfer of savings.

In fine, if cross-border transfer of savings has, indeed, been a long-standing practice of the whole government bureaucracy, then the Court's ruling in this case should be a clear signal to put an end to this unconstitutional practice. Long-standing practices cannot justify or legitimize a continuing violation of the Constitution.

In another vein, I agree with the majority that Section 39, Chapter V, Book VI of the Administrative Code cannot be made a basis to justify the cross-border transfer of savings, for the reasons given by the majority.

V.

On the legality of the releases from the Unprogrammed Fund and the use thereof under the DAP, the Solicitor General argues, thus:

87. The Honorable Court ruled that revenue collections must exceed the total of the revenue targets stated in the Budget for Expenditures and Sources of Financing (BESF) before expenditures under the Unprogrammed Fund can be made. This is incorrect not only because this is not what those who wrote the item—the DBM—intended, which intention was ratified by Congress over the years, but also because such interpretation defeats the purpose of creating the Unprogrammed Fund.

88. **This interpretation is incorrect, for a simple reason: everybody knows that the government's total revenue collections have never exceeded the total original revenue targets**. Certainly, the government—the Executive and the Legislature—would never have created the Unprogrammed Fund as a revenue source if, apart from newly-approved loans for foreign-assisted project, it would have never been available for use. The effect of the Honorable Court's interpretation is to effectively nullify the Unprogrammed Fund for the years 2011 to 2013. *Certainly, the Executive would not have proposed billions of pesos under the Unprogrammed Fund in the NEP, and Congress would not have provided for said appropriation in the GAA, with the intention that it can never be implemented.*

89. Because we are not interpreting the Constitution with respect to the meaning of the Unprogrammed Fund, with respect, it is incorrect for the Honorable Court to reject the interpretation placed by those who actually wrote the item for the Unprogrammed Fund. What is the purpose to be served in nullifying the intention of the authors of the Unprogrammed Fund, which intention was effectively ratified by Congress over the course of several years? In the absence of a violation of the Constitution, this Honorable Court should not reject the Executive department's reading of the provisions of the Unprogrammed Fund which it co-authored with Congress.

90. The text is clear: excess revenue collections refer to the excess of actual revenue collections over estimated revenue targets, not the difference between revenue collections and expenditures. The 2011, 2012 and 2013 GAAs only require that revenue collections

from *each source of revenue* enumerated in the budget proposal must exceed *the corresponding revenue target.*

91. To illustrate, under the 2011 BESF, the estimated revenues to be collected from dividends from shares of stock in government-owned and controlled corporations is ₱5.5 billion. By 31 January 2011, the National Government had already collected dividend income in the amount of ₱23.8 billion. In such case, the difference between the revenues collected (₱23.8 billion) and the revenue target (₱5.5) becomes excess revenue which can be used to fund the purposes under the Unprogrammed Fund.

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93. Apart from the fact that the Honorable Court's interpretation would render much of the Unprogrammed Fund useless, the text of the special provision referring to the Unprogrammed Fund supports the government's intention and interpretation: **(1) if the provision was meant to refer to aggregate amounts, it would have used the word "total" or the phrase "only when the revenue collection exceeds the original revenue target;" (2) the phrase "original revenue targets" clearly indicates a plurality of revenue targets with which the revenue collections must be matched**.[7] (Emphasis supplied; italics in the original)

The point is well-taken.

In my July 1, 2014 Opinion, I joined the majority in interpreting the phrase "when the revenue collections exceed the original revenue targets" as pertaining to the actual *total* revenue collections vis-à-vis original *total* revenue targets so much so that this provision would trigger the release of the Unprogrammed Fund only when there is a budget surplus, which, as correctly pointed out by the Solicitor General, would render useless the billions of pesos appropriated by Congress under the Unprogrammed Fund because we can take judicial notice that the government operates under a budget deficit. The phrase also could have been specifically worded as using the term "total" if the purpose was, indeed, to refer to the aggregate actual revenue collections vis-à-vis the aggregate original revenue targets.

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[7] Motion for Reconsideration, pp. 29-31.

Although I note that these arguments are being raised for the first time by the Solicitor General, I find the same to be correct based on the familiar rule of statutory construction according great respect to the interpretation by officers entrusted with the administration of the law subject of judicial scrutiny. Because the law is ambiguous, as even the majority concedes, and, thus, susceptible to two interpretations, there is no obstacle to adopting the interpretation of those who were closely involved in the crafting of the law, for their interpretation is solidly founded on the wording of the law and the practical realities of its operation. It should not be forgotten that the Executive Department proposed the budget, including the provisions on the Unprogrammed Fund of the pertinent GAAs. Further, that this interpretation may result to budgetary deficit spending goes into the wisdom and policy of the law, which the Court cannot overturn in the guise of statutory construction.

I, therefore, modify my position in my July 1, 2014 Opinion and agree with the Solicitor General that the phrase "when the revenue collections exceed the original revenue targets" should be construed as merely requiring "that revenue collections from each source of revenue enumerated in the budget proposal must exceed the corresponding revenue target."

The majority maintains its previous position in its July 1, 2014 Decision that the aforesaid phrase refers to total revenue collections versus total original revenue targets. It reasons that "revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. We have even cautioned that the release of unprogrammed funds based on the respondents' position could be unsound fiscal management for disregarding the budget plan and fostering budget deficits, contrary to the Government's surplus budget policy."

I disagree.

As earlier stated, this reasoning goes into the wisdom and policy of the GAA provisions on the Unprogrammed Fund. It cannot, therefore, be considered controlling in interpreting the subject phrase unless it is shown that such a surplus budget policy was clearly and absolutely intended by the legislature.

It was not.

The wording of the GAA provisions on the Unprogrammed Fund point to the contrary. As I noted in my July 1, 2014 Opinion:

> The Unprogrammed Fund provisions under the 2011, 2012 and 2013 GAAs, respectively, state:
>
> 2011 GAA (Article XLV):
>
> 1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.
>
> 2012 GAA (Article XLVI)
>
> 1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution: PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

2013 GAA (Article XLV)

1. Release of Fund. The amounts authorized herein shall be released only when the revenue collections exceed the original revenue targets submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including collections arising from sources not considered in the original revenue targets, as certified by the Btr: PROVIDED, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds. (Emphasis supplied)

As may be gleaned from the afore-quoted provisions, in the 2011 GAA, there are three *provisos*, to wit:

1. PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund,

2. PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds,

3. PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.

In the 2012 GAA, there are two *provisos*, to wit:

1. PROVIDED, That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund,

2. PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

And, in the 2013 GAA, there is one *proviso*, to wit:

1. PROVIDED, That in case of newly approved loans for foreign assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

If, indeed, a surplus budget policy is the overriding principle governing the Unprogrammed Fund, then Congress would not have authorized the release of the Unprogrammed Fund from (1) collections arising from sources not considered in the original revenue targets, (2) newly approved loans for foreign-assisted projects, and (3) savings from programmed appropriations subject to certain conditions insofar as the 2011 GAA, ***instead***, Congress should have specifically provided that the aforesaid sources of funds should be ***first*** used to cover any deficit in the entire budget before being utilized for unprogrammed appropriations.

Further, a special provision of the Unprogrammed Fund under the 2011, 2012 and 2013 GAAs uniformly provide:

Use of Excess Income. Agencies collecting fees and charges as shown in the FY [2011, 2012 or 2013] Budget of Expenditures and Sources of Financing (BESF) may be allowed to use their income realized and deposited with the National Treasury, **in excess of the collection targets presented in the BESF**, chargeable against Purpose [4, 3 or 3] - General Fund Adjustments, to augment their respective current appropriations, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That said income shall not be used to augment Personal Services appropriations including payment of discretionary and representation expenses.

Implementation of this section shall be subject to guidelines jointly issued by the DBM and DOF. (Emphasis supplied)

The same reasoning may be applied to the above-quoted provision. Again, if a surplus budget policy was clearly and absolutely intended by Congress, then it would not have authorized the release of excess income, by the concerned agencies, for the purpose of "General Fund Adjustments" under the Unprogrammed Fund without specifically providing that such excess income be ***first*** utilized to cover any deficit in the entire budget before applying the same to the unprogrammed appropriations.

While the majority may have good reasons to employ an interpretation of the GAA provisions on the Unprogrammed Fund that seeks to prevent or mitigate budgetary deficit spending, it is not within the province of the Court to engage in policy-making. If the interpretation and application of the subject phrase by the Executive Department leads to dire or ill effects in the economy, then the remedy is with Congress and not this Court. (Parenthetically, after the majority's July 1, 2014 Decision was issued by this Court, Congress repudiated the majority's interpretation of the subject phrase by, among others, expressly providing in the 2015 GAA that releases from the Unprogrammed Fund may be authorized when "there are excess revenue collections in any one of the identified non-tax revenue sources from its corresponding revenue target," subject to certain conditions.)

In sum, given the ambiguity of the subject phrase, the doubt should be resolved in favor of the interpretation of those who are entrusted with the administration of the law and who were closely involved in its enactment. The Court should not allow itself to be entangled with policy-making under the guise of statutory construction.

In any event, the foregoing will not alter my vote, relative to this issue, in this case. Instead, it merely allows the government to prove that, indeed, the revenue collections from each source of revenue enumerated in the budget proposal exceeded the corresponding revenue target to justify the release of funds under the Unprogrammed Fund, apart from the exceptive clauses which I already extensively discussed in my July 1, 2014 Opinion. Whether there is sufficient proof that the aforesaid scenario occurred to justify the release of the Unprogrammed Fund, which was used under the DAP, must be established and decided in a proper case.

In another vein, the majority further ruled that the release from the Unprogrammed Fund may occur prior to the end of the fiscal year provided that there are surpluses from the quarterly revenue collections versus the quarterly revenue targets set by the Development Budget Coordination Committee (DBCC).

I disagree insofar as the basis made for the releases is the revenue targets set by the DBCC.

The 2011, 2012 and 2013 GAA provisions on the Unprogrammed Fund uniformly provide that the release therefrom shall be authorized when "the revenue collections exceed the original revenue targets **submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution.**"[8] Section 22, Article VII of the Constitution provides:

> The President shall submit to the Congress within thirty days from the opening of the regular session, as the basis of the general appropriations bill, **a budget of expenditures and sources of financing**, including receipts from existing and proposed revenue measures. (Emphasis supplied)

The law is clear. The basis of the "original revenue targets" under the Unprogrammed Fund is the budget of expenditures and sources of financing submitted by the President to Congress. This is commonly known as the Budget for Expenditures and Sources of Financing (BESF).

As correctly noted by Justice Carpio, the DBCC set the 2013 total revenue target at ₱1,745.9B.[9] However, a comparison with the 2013 BESF shows that the total revenue target set therein is at ₱1,780.1B.[10] Revenue targets are normally adjusted downward due to developments in the economy as well as other internal and external factors. This appears to be the reason why the law uses the term "original" to qualify the phrase "revenue targets" under the Unprogrammed Fund. That is, the law recognizes that the government may adjust revenue targets downward during the course of budget execution due to unforeseen developments. By providing that the "original" revenue targets

[8] Emphasis supplied.

[9] http://www/dbm/gov.ph/wp-content/uploads/DBCC_MATTERS/Fiscal_Program/FiscalProgramOfNG Fy_2013.pdf (last visited February 2, 2015)

[10] http://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/C1.pdf (last visited February 2, 2015)

under the BESF shall be made the bases for the release of the Unprogrammed Fund, the Executive Department is, thus, prevented or precluded from "abusing" the Unprogrammed Fund by maneuvering increased releases therefrom through the downward adjustment of the revenue targets during the course of budget execution.

Hence, I find that the "original" revenue targets in the BESF are the proper bases for the release of the Unprogrammed Fund, by virtue of the clear provisions of the pertinent GAAs, and not the revenue targets set by the DBCC.

VI.

In its July 1, 2014 Decision, the majority stated, thus:

> Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional validity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.
>
> In that context, as Justice Brion has clarified, **the doctrine of operative fact** can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, **but cannot apply to the authors, proponents and implementors of the DAP**, **unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities**." (Emphasis supplied)

In response to this statement, and those in the other separate opinions in this case, relative to this issue, I stated that—

> Because of the various views expressed relative to the impact of the operative fact doctrine on the potential administrative, civil and/or criminal liability of those involved in the implementation of the DAP, I additionally state that any discussion or ruling on the aforesaid liability of the persons who authorized and the persons who received the funds from the aforementioned unconstitutional cross-border

transfers of savings, is premature. The doctrine of operative fact is limited to the effects of the declaration of unconstitutionality on the executive or legislative act that is declared unconstitutional. Thus, it is improper for this Court to discuss or rule on matters not squarely at issue or decisive in this case which affect or may affect their alleged liabilities without giving them an opportunity to be heard and to raise such defenses that the law allows them in a proper case where their liabilities are properly at issue. Due process is the bedrock principle of our democracy. Again, we cannot run roughshod over fundamental rights.

The majority now clarifies that its statement that "the doctrine of operative fact x x x cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities" does not do away with the presumption of good faith, the presumption of innocence and the presumption of regularity in the performance of official duties.

I am in accord with this clarification.

Finally, I reiterate that the operative fact doctrine applies only to the cross-border transfers of savings actually proven in this case, *i.e.*, the admitted cross-border transfers of savings from the Executive Department to the Commission on Audit, House of Representatives and Commission on Elections, respectively. Any ruling as to its applicability to the other DAP-funded projects is premature in view of the lack of sufficient proof, litigated in a proper case, that they were implemented in violation of the Constitution.

ACCORDINGLY, I vote to:

1. **DENY** petitioners' Motion for Partial Reconsideration; and

2. **PARTIALLY GRANT** respondents' Motion for Reconsideration. Consistent with my July 1, 2014 Opinion, I maintain that the Disbursement Acceleration Program is **PARTIALLY UNCONSTITUTIONAL**:

2.1 Sections 5.4, 5.5 and 5.7 of National Budget Circular No. 541 are **VOID** insofar as they (1) allowed the withdrawal of unobligated allotments from slow-moving projects which were not finally discontinued or abandoned, and (2) authorized the use of such withdrawn unobligated allotments as "savings" for violating the definition of "savings" under the 2011, 2012 and 2013 general appropriations acts.

2.2 The admitted cross-border transfers of savings from the Executive Department, on the one hand, to the Commission on Audit, House of Representatives and Commission on Elections, respectively, on the other, are **VOID** for violating Article VI, Section 25(5) of the Constitution.

2.3 The phrase "to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year" in Section 5.7.3 of National Budget Circular No. 541 is **VOID** for contravening Article VI, Section 29(1) of the Constitution and Section 54 of the 2012 General Appropriations Act.

INDEX

INDEX

ACTIONS

Moot and academic cases — The execution of the release, waiver and quitclaim and the addendum thereto rendered the case moot and academic. (Magtalas *vs*. Ante, G.R. No. 193451, Jan. 28, 2015) p. 221

ADMINISTRATIVE CODE OF 1987

Reversion of unexpected balances of appropriations — The reversion to the general fund of unexpended balances of appropriations which includes savings does not apply to the constitutional fiscal autonomy group due to the fiscal autonomy they enjoy. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

Section 39 — Sec. 39 of the Code violates the constitutional mandate that limits the authority of the President to augment an item in the General Appropriations Act to only those in his own department out of the savings in other items of his own department's appropriations. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

Suspension of expenditure of appropriations — The withdrawal of unobligated allotments effectively results in the suspension or stoppage of expenditures but the reissuance of withdrawn allotments to the original projects is a clear indication that the projects from which the allotments were withdrawn have not been discontinued and abandoned, rendering the declaration of the funds as savings impossible. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

— When the President suspends or stops the expenditure of funds, savings are not automatically generated until it has been established that such funds are free from any obligation and that the purpose for which the appropriation is authorized has been completed, discontinued or abandoned. (*Id*.)

AGGRAVATING CIRCUMSTANCES

Evident premeditation — Elements; when present. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

APPEALS

Illegal dismissal — It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made, and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

Petition for review — Pre-marital relations between two consenting adults who have no impediment to marry each other, and consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

— To be considered as disgraceful or immoral, the conduct must be detrimental or dangerous to those conditions upon which depend the existence and progress of human society and not because the conduct is proscribed by the beliefs of one religion or the other. (*Id.*)

— To determine whether a conduct is disgraceful or immoral, a consideration of the totality of the circumstances surrounding the conduct must be assessed *vis-à-vis* the prevailing norms of conduct. (*Id.*)

— When there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, the same may be reviewed by the courts. (*Id.*)

Points of law, theories, issues and arguments — Points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first

time on appeal. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

ATTORNEYS

Attorney-client relationship — Negligence of the counsel binds the client; exception is when negligence of the counsel is gross, depriving the client of due process of law. (Ong Lay Hin *vs*. CA (2nd Div.), G.R. No. 191972, Jan. 26, 2015) p. 15

Attorney's fees — Action to recover attorney's fees. (Aquino *vs*. Hon. Casabar, Br. 33, G.R. No. 191470, Jan. 26, 2015) p. 1

— As alleged contingent fees was not in writing, the attorney can only recover on the basis of *quantum meruit. (Id.)*

— Attorney's fees as compensation for professional services rendered in agrarian case; may be determined by the handling judge upon proper petition as incidental issue to the main case. (*Id*.)

— Non-payment of docket fees for the motion did not divest the agrarian court of its jurisdiction. (*Id*.)

— Two concepts of attorney's fees, discussed. (*Id*.)

Borrowing money from clients and refusing to pay the same — Return of money received from the clients not in consideration of professional services is beyond the ambit of an administrative case; civil liability for money not intrinsically linked to professional engagement is separate and distinct from respondent's administrative liability. (Sps. Concepcion *vs*. Atty. Dela Rosa, A.C. No. 10681, Feb. 3, 2015) p. 485

— The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. (*Id*.)

Code of Professional Responsibility — Borrowing money from clients and refusing to pay the same constitute violation of Canon 7 and Rule 16.04, Canon 16 of the Code of

Professional Responsibility. (Sps. Concepcion *vs*. Atty. Dela Rosa, A.C. No. 10681, Feb. 3, 2015) p. 485

— Guidelines for determining the proper amount of attorney's fees. (Aquino *vs*. Hon. Casabar, Br. 33, G.R. No. 191470, Jan. 26, 2015) p. 1

Conduct of — Harsh and disrespectful language uttered against the Court and its Members accusing them of ignorance and recklessness in the performance of their function of adjudication cannot be tolerated. (Fortune Life Ins. Co., Inc. *vs*. COA Proper, G.R. No. 213525, Jan. 27, 2015) p. 97

Disbarment — Circumstances showing that the conviction for homicide involved moral turpitude. (Garcia *vs*. Atty. Sesbreño, A.C. No. 7973 and A.C. No. 10457, Feb. 3, 2015) p. 463

— Disbarment by reason of a conviction of a crime involving moral turpitude. (*Id*.)

— Where a lawyer who was granted an executive clemency still has no privilege to practice his legal profession. (*Id*.)

Duties of — A lawyer's acceptance to take up a case impliedly stipulates that he will carry it to its termination, that is until the case becomes final and executory, and his duty to his clients does not automatically cease with his suspension from practicing the profession. (Tejano *vs*. Atty. Baterina, A.C. No. 8235, Jan. 27, 2015) p. 71

— Lawyers are particularly called upon to obey court orders and processes, and are expected to stand foremost in complying with court directives being themselves officers of the court, as the resolution of the court is not a mere request but an order which should be complied with promptly and completely. (*Id*.)

Gross negligence — Respondent's pattern of neglecting his duty to his clients and propensity for disrespecting the authority of the courts warrant an imposition of a longer

suspension period of five (5) years for gross negligence. (Tejano *vs*. Atty. Baterina, A.C. No. 8235, Jan. 27, 2015) p. 71

— The lawyer's failure to file the required pleadings on his client's behalf constitutes gross negligence; proper penalty. (*Id*.)

Negligence in handling the client's cause — Proper penalty is a two-year suspension from the practice of law. (Ramirez *vs*. Atty. Buhayang-Margallo, A.C. No. 10537, Feb. 3, 2015) p. 473

— When committed. (*Id*.)

ATTORNEY'S FEES

Award of — Petitioner is entitled to attorney's fees not because of bad faith but due to the provision of law. (Eyana *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 193468, Jan. 28, 2015) p. 232

— Proper where employee is forced to litigate for protection of right and interest. (C.F. Sharp Crew Mgm't., Inc. *vs*. Perez, G.R. No. 194885, Jan. 26, 2015) p. 46

— When may be awarded in labor cases. (G.J.T. Rebuilders Machine Shop *vs*. Ambos, G.R. No. 174184, Jan. 28, 2015) p. 166

CERTIORARI

Grave abuse of discretion — Defined. (Ong Lay Hin *vs*. CA (2nd Div.), G.R. No. 191972, Jan. 26, 2015) p. 15

Petition for — As a rule, the findings of fact of the Court of Appeals are final and conclusive, and the Supreme Court will not review them on appeal; exceptions. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

— Fresh period rule does not apply to petition for *certiorari* under Rule 64. (Fortune Life Ins. Co., Inc. *vs*. COA Proper, G.R. No. 213525, Jan. 27, 2015) p. 97

— Grave abuse of discretion, explained; when not present. (*Id.*)

— Petition for *certiorari* under Rule 64 of the Rules of Court, distinguished from petition for review. (*Id.*)

CIVIL LIABILITY

Award of — The amounts of civil indemnity, moral damages and exemplary damages awarded by the CA must be increased to ₱100,000.00 each in line with prevailing jurisprudence; temperate damages in the amount of ₱25,000.00 must also be awarded in view of the absence of evidence of burial and funeral expenses. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal sale and illegal delivery of dangerous drugs — Elements. (People *vs*. Pasion *y* Dela Cruz, G.R. No. 203026, Jan. 28, 2015) p. 359

Illegal sale, illegal delivery and illegal possession of dangerous drugs —Imposable penalties. (People *vs*. Pasion *y* Dela Cruz, G.R. No. 203026, Jan. 28, 2015) p. 359

Possession of dangerous drugs — Elements. (People *vs*. Pasion *y* Dela Cruz, G.R. No. 203026, Jan. 28, 2015) p. 359

CONSPIRACY

Existence of — Where conspiracy was established, evidence as to who delivered the fatal blow is dispensable. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

CORPORATIONS

Doctrine of piercing of veil of corporate fiction — The officers and members of a corporation are not personally liable for acts done in the performance of their duties; application. (Eyana *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 193468, Jan. 28, 2015) p. 232

Doctrine of separate corporate liability — In labor cases, the Supreme Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or bad faith. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

Interim Rules of Procedure on Corporate Rehabilitation — Any order issued by the trial court in rehabilitation proceedings is immediately executory; appeal cannot restrain the effectivity of the order. (Home Guaranty Corp. *vs*. La Savoie Dev't. Corp., G.R. No. 168616, Jan. 28, 2015) p. 123

— Effect of stay order issued by the Regional Trial Court. (*Id*.)

Receivership — While it is true that the intention of suspending the enforcement of the claims against a corporation is "to prevent a creditor from obtaining an advantage," it however applies only to corporations under receivership. (Home Guaranty Corp. *vs*. La Savoie Dev't. Corp., G.R. No. 168616, Jan. 28, 2015) p. 123

COURT PERSONNEL

Clerks of Court — Dishonesty and grave misconduct are grave offenses punishable by dismissal from the service. (OCAD *vs*. Redoña, A.M. No. P-14-3194 (Formerly A.M. No. 14-1-01-MTC), Jan. 27, 2015) p. 83

— Failure to immediately deposit the fiduciary collections with authorized government depositories constitutes gross neglect of duty, and failure to comply with pertinent court circulars designed to promote full accountability for public funds constitutes grave misconduct; good faith, forgetfulness, lack of secured storage area for collection, and full payment of the collection shortages not a defense. (*Id*.)

— Shortages in the amounts to be remitted and the years of delay in the actual remittances constitute gross neglect of duty. (*Id*.)

DAMAGES

Moral and exemplary damages and attorney's fees — When may be awarded to a dismissed employee. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

DENIAL AND ALIBI

Defenses of — Defenses of denial and alibi cannot be given any weight when not supported by clear and convincing evidence. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD

Jurisdiction — Absent any tenurial relationship, summary action for ejectment is cognizable by the regular courts. (Ofilada *vs*. Sps. Andal, G.R. No. 192270, Jan. 26, 2015) p. 27

— Has exclusive and original jurisdiction over all agrarian disputes. (*Id*.)

— Tenancy relationship must be sufficiently established; elements. (*Id*.)

DISABILITY BENEFITS

Award of — A party alleging a critical fact must support his allegation with substantial evidence; the existence of a collective bargaining agreement cannot be made the basis for the award of disability compensation in case at bar. (Eyana *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 193468, Jan. 28, 2015) p. 232

— Failure of company-designated physician to issue a disability rating within the prescribed period gives rise to a conclusive presumption that the seafarer is totally and permanently disabled; present in case at bar. (*Id*.)

EMPLOYEES, KINDS OF

Project-based employee — Requisites, explained. (Gadia *vs*. Sykes Asia, Inc., G.R. No. 209499, Jan. 28, 2015) p. 413

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogative — The exercise of management prerogative is not absolute as it must be exercised in good faith and with due regard to the rights of labor and not in a cruel, repressive, or despotic manner. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

EMPLOYMENT, TERMINATION OF

Abandonment of work — As a just ground for dismissal; elements, explained. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

Closure of business — As a valid cause for termination of employment; requirements. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

Dismissal due to cessation or closure of business — Amount of nominal damages to be paid by the employer for non-compliance with the notice requirement is addressed to the sound discretion of the court; factors to consider. (G.J.T. Rebuilders Machine Shop *vs*. Ambos, G.R. No. 174184, Jan. 28, 2015) p. 166

— Conferring with the employees of the intention to cease business operations is not compliant with the notice requirement for the law requires a written notice of closure served on the affected employees. (*Id*.)

— Employer cannot be compelled to pay separation pay when the closure of the establishment is due to serious business losses or financial reverses but the employer must prove its serious business losses. (*Id*.)

— Notice requirement; failure to comply with the notice requirement renders the employer liable for nominal damages. (*Id*.)

— The decision to close one's business is a management prerogative that the courts cannot interfere with, but the employer must pay the affected workers separation pay. (*Id*.)

Dismissal on ground of disgraceful or immoral conduct under Section 94(e) of the 1992 Manual of Regulations for Private Schools — The employee's pregnancy out of wedlock, without more, is not sufficient to characterize her conduct as disgraceful or immoral for there must be substantial evidence to establish that pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

Illegal dismissal — An illegally dismissed employee is entitled to full backwages and separation pay, in lieu of reinstatement, when the latter recourse is no longer practical or in the best interest of the parties. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

— Remedy; where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

Loss of trust and confidence — As a ground for dismissal; unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

1992 Manual of Regulations for Private Schools — The provisions of the 1992 Manual of Regulations for Private Schools providing for the causes of terminating the employment of the teaching and non-teaching personnel of private schools are valid. (Leus *vs*. St. Scholastica's College Westgrove, G.R. No. 187226, Jan. 28, 2015) p. 186

ESTAFA

Estafa through falsification of a commercial document — Four counts of estafa, established. (De Castro *vs*. People, G.R. No. 171672, Feb. 2, 2015) p. 424

— Imposable penalties for four counts of estafa through falsification of commercial documents, clarified. (*Id.*)

EVIDENCE

Circumstantial evidence — The evidence must exclude the possibility that some other person committed the crime. (Zabala *vs*. People, G.R. No. 210760, Jan. 26, 2015) p. 59

— When sufficient for conviction; application of the circumstantial evidence rule. (*Id.*)

FORUM SHOPPING

Commission of — Filing two cases invoking the same right and proceeding from the same cause of action constitutes forum shopping. (Home Guaranty Corp. *vs*. La Savoie Dev't. Corp., G.R. No. 168616, Jan. 28, 2015) p. 123

JUDGMENTS

Entry of judgment and final resolutions — Made if no appeal or motion for new trial or reconsideration is filed within the time provided. (Ong Lay Hin *vs*. CA (2nd Div.), G.R. No. 191972, Jan. 26, 2015) p. 15

JUDICIAL DEPARTMENT

Judicial review — The interpretation of the General Appropriations Act and its definition of savings, as well as the resolution of the allegation of grave abuse of discretion demand the exercise of judicial review. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

JUDICIAL REVIEW

Doctrine of operative fact — The nullification of an unconstitutional law or act carries with it the illegality of its effects except in cases where nullification of the effects will result in inequity and injustice. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

— There was no negation of the presumption of good faith when the Court held that the doctrine cannot apply to the authors, proponents and implementors of the Disbursement Acceleration Program unless there are

concrete findings of good faith in their favor only after hearing of all parties, for such hearing can proceed only after according all the presumptions, particularly that of good faith. (*Id.*)

LAND REGISTRATION

Registration of title — Period of possession should include the period of adverse possession prior to the declaration that the land is alienable and disposable. (Rep. of the Phil. *vs*. Roasa, G.R. No. 176022, Feb. 2, 2015) p. 439

— Required nature and period of adverse possession, complied with in case at bar. (*Id.*)

— Requisites for original registration of title based on a claim of exclusive and continuous possession. (*Id.*)

LEGISLATIVE DEPARTMENT

General Appropriations Act — Unprogrammed funds may only be released upon proof that the aggregate revenue collection exceeded the aggregate revenue target and releases from the unprogrammed fund may take place prior to the end of the fiscal year. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

Power to augment — Must be strictly construed, it being an exception to the general rule that funding of programs, activities and projects shall be limited to the amount fixed by Congress for the purpose, and necessarily, the utilization and management of savings will also be strictly construed against the expanding scope of the power to augment. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

Prohibition against transfers and augmentation of funds — The term *item* that may be the object of augmentation is the last and indivisible purpose of a program in the appropriation law which must contain specific appropriations of money. (Araullo *vs*. Aquino III, G.R. No. 209287, Feb. 3, 2015) p. 716

— There must be an item in the General Appropriations Act for which Congress has set aside a specified amount of public funds to which savings may be transferred for augmentation purposes. (*Id.*)

MURDER

Commission of — Elements, established. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

Penalty — Proper penalty where murder was committed with treachery and evident premeditation. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

NATIONAL ECONOMY AND PATRIMONY

Grandfather Rule — The Grandfather Rule implements the Filipino equity requirement in the Constitution; explained. (Narra Nickel Mining and Dev't. Corp. *vs*. Redmont Consolidated Mines Corp., G.R. No. 195580, Jan. 28, 2015) p. 255

— The use of the Grandfather Rule as a "supplement" to the control test is not proscribed by the Constitution of the Mining Act of 1995; sustained. (*Id.*)

NATIONAL LABOR RELATIONS COMMISSION

Grave abuse of discretion — In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions reached thereby are not supported by evidence; when sustained. (Gadia *vs*. Sykes Asia, Inc., G.R. No. 209499, Jan. 28, 2015) p. 413

NLRC RULES OF PROCEDURE

Labor Arbiter's decision — Contents. (C.F. Sharp Crew Mgm't., Inc. *vs*. Perez, G.R. No. 194885, Jan. 26, 2015) p. 46

PACTUM COMMISSORIUM

Elements — Enumerated; transfer of property which makes out a clear case of *pactum commissorium* is void and ineffectual. (Home Guaranty Corp. *vs*. La Savoie Dev't. Corp., G.R. No. 168616, Jan. 28, 2015) p. 123

PATERNITY AND FILIATION

Proof of filiation — SSS Form E-1 satisfies the requirement for proof of filiation and relationship to parents; when present. (Aguilar *vs*. Siasat, G.R. No. 200169, Jan. 28, 2015) p. 344

1996 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT

Claim for disability benefits — Disqualification therefrom does not include fraud in concealing pre-existing medical condition. (C.F. Sharp Crew Mgm't., Inc. *vs*. Perez, G.R. No. 194885, Jan. 26, 2015) p. 46

— It is enough to prove that the injury or illness was acquired during the term of employment. (*Id*.)

— Without a declaration that seafarer is fit to work or an assessment of the degree of disability, the disability is deemed as permanent and total. (*Id*.)

PLEADINGS

Verification — Verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. (Manarpiis *vs*. Texas Phil., Inc., G.R. No. 197011, Jan. 28, 2015) p. 305

PLEADINGS AND PRACTICE

Service by registered mail — Registry return card as evidence thereof. (Ong Lay Hin *vs*. CA (2nd Div.), G.R. No. 191972, Jan. 26, 2015) p. 15

PLEADINGS, SERVICE OF

Proof of service — Where service is done through registered mail, either or both the affidavit of the person effecting the mailing and the registry receipt must be appended to the paper being served. (Fortune Life Ins. Co., Inc. *vs*. COA Proper, G.R. No. 213525, Jan. 27, 2015) p. 97

PRESUMPTIONS

Disputable presumptions — The presumption of regularity in the performance of duty must prevail over appellant's unsubstantiated allegations; when established. (People *vs*. Pasion *y* Dela Cruz, G.R. No. 203026, Jan. 28, 2015) p. 359

PROPERTY

Implied trust — Implied trust was created when the Home Guaranty Corporation acquired the properties comprising the asset pool through the ineffectual transfer. (Home Guaranty Corp. *vs*. La Savoie Dev't. Corp., G.R. No. 168616, Jan. 28, 2015) p. 123

QUALIFYING CIRCUMSTANCES

Treachery — When appreciated. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

Certificate of Non-overlap — CNO should have been secured prior to the consummation of the Lease and Development Agreement (LDA) between Subic Bay Metropolitan Authority (SBMA) and RP Energy; the Court, however, refrained from invalidating the LDA due to equitable considerations. (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

Environmental Compliance Certificate — Certificate of Non-overlap (CNO) is not a precondition to the issuance of ECC and lack of it does not render the ECC invalid. (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

— Circumstances in the case at bar do not warrant invalidation of the ECC despite lack of signature in the Statement of Accountability; reasons. (*Id*.)

— Signature in the Statement of Accountability is necessary for the validity of the ECC. (*Id*.)

— The first and second amendments to the ECC were valid. (*Id*.)

— The validity of an Environmental Compliance Certificate may be challenged *via* a writ of *kalikasan* subject to certain qualifications. (*Id*.)

Expert witnesses — No sufficient compelling reason existed to compel the testimonies of expert witnesses; reasons. (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

Writ of kalikasan — Petition for issuance of; nature and purpose of the writ. (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

— Petitioners failed to prove that the construction and operation of the power plant will cause grave environmental damage. (*Id*.)

— Requisites that must be present to avail of the remedy. (*Id*.)

SALES

Contract of sale — Essential elements of a contract of sale. (First Optima Realty Corp. *vs*. Securitron Security Services, Inc., G.R. No. 199648, Jan. 28, 2015) p. 326

— In a potential sale transaction, the prior payment of earnest money even before the property owner can agree to sell his property is irregular, and cannot be used to bind the owner to the obligation of a seller under an otherwise perfected contract of sale; rationale. (*Id*.)

— Where there is merely an offer by one party without acceptance of the other, there is no contract; stages of contract of sale, enumerated. (*Id*.)

SHERIFFS

Conduct of — The conduct thereof must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulation for no position demands greater moral righteousness and uprightness from its

holder than an office in the judiciary. (Sabijon *vs*. De Juan, A.M. No. P-14-3281 (Formerly OCA IPI No. 12-3998), Jan. 28, 2015) p. 110

Duties — Expected to know the rules of procedure pertaining to their functions as officers of the court, relative to the implementation of writs of execution, and should at all times show a high degree of professionalism in the performance of their duties. (Sabijon *vs*. De Juan, A.M. No. P-14-3281 (Formerly OCA IPI No. 12-3998), Jan. 28, 2015) p. 110

Simple neglect of duty and grave abuse of authority — Defined; deviation from the rules of procedure relative to the enforcement of the money judgments and the implementation of writs of execution constitutes grave abuse of authority and simple neglect of duty. (Sabijon *vs*. De Juan, A.M. No. P-14-3281 (Formerly OCA IPI No. 12-3998), Jan. 28, 2015) p. 110

— Proper penalty. (*Id*.)

— The presence of the mitigating circumstances of "first offense" and "length of service" does not automatically result in the downgrading of the penalty to be imposed especially where an aggravating circumstance is present. (*Id*.)

SUBIC BAY METROPOLITAN AUTHORITY

Decision — Prior approval of the concerned *sanggunians* is not necessary to the implementation of the power plant project; decision of the SBMA prevails over the objections of the concerned *sanggunians.* (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

Environmental Compliance Certificate — Nature of amendment is considered in determining the proper Environmental Impact Assessment document type; new Environmental Impact Statement (EIS) is not necessary for an amendment to an ECC in case at bar. (Hon. Paje *vs*. Hon. Casiño, G.R. No. 207257, Feb. 3, 2015) p. 498

— The issue on the validity of the third amendment to the ECC cannot be resolved in this case because it was not included in the preliminary conference. (*Id.*)

TAX REFUND

Nature — Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power; requirements. (Winebrenner & Iñigo Ins. Brokers, Inc. *vs*. Commissioner of Internal Rev., G.R. No. 206526, Jan. 28, 2015) p. 375

Proof — The Commissioner of Internal Revenue has the equally important responsibility of contradicting taxpayer's claim by presenting proof readily on hand once the burden of evidence shifts to its side; application. (Winebrenner & Iñigo Ins. Brokers, Inc. *vs*. Commissioner of Internal Rev., G.R. No. 206526, Jan. 28, 2015) p. 375

— What the law requires is to prove the prima facie entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year; presentation of quarterly income tax returns is not absolute; rationale. (*Id.*)

THEFT

Elements — *Corpus delicti* of theft; elements, not established. (Zabala *vs*. People, G.R. No. 210760, Jan. 26, 2015) p. 59

WITNESSES

Credibility of — When failure of the witnesses to testify on their sworn statements does not affect their credibility and render the sworn statements inadmissible. (People *vs*. Dimacuha, Jr., G.R. No. 191060, Feb. 2, 2015) p. 451

CITATION

Page

I. LOCAL CASES

Abbott Laboratories, Philippines *vs*.
Alcaraz, G.R. No. 192571, July 23, 2013,
701 SCRA 682, 715 182
Aboitiz Equity Ventures *vs*. Chiongbian,
G.R. No. 197530, July 9, 2014 141
Acop *vs*. Guingona, Jr., 433 Phil. 62 (2002) 263
AFP Retirement and Separation Benefits System
(AFP-RSBS) *vs*. Republic of the Philippines,
G.R. No. 180086, July 2, 2014 .... 446, 449
Alba *vs*. Yupangco, G.R. No. 188233,
June 29, 2010, 622 SCRA 503, 507-508 325
Albaña *vs*. Comelec, 478 Phil. 941 (2004) 263
Alcantara-Aquino *vs*. Dela Cruz, A.M. No. P-13-3141
(Formerly OCA I.P.I. No. 08-2875-P), Jan. 21, 2014,
714 SCRA 377, 345 96
Allied Banking Corporation *vs*. Court of Appeals,
G.R. No. 108089, Jan. 10, 1994, 229 SCRA 252, 258 142
Alvarez *vs*. Picop, 538 Phil. 348, 402-403 (2006) 644
Amado *vs*. Salvador, 564 Phil. 728, 740 (2007) 343
Amigo *vs*. Teves, 96 Phil. 252 (1954) 316
Andrada *vs*. National Labor Relations Commission,
565 Phil. 821, 839 (2007) 216
Ang *vs*. Ang, G.R. No. 186993, Aug. 22, 2012,
678 SCRA 699, 707 685
Ang Tibay *vs.* Court of Industrial Relations,
69 Phil. 635, 642-645 (1940) 705
Angara *vs*. Electoral Commission,
63 Phil. 139, 158 (1936) 803, 844
Anido *vs*. Negado, 419 Phil. 800, 807 (2001) 11
Anonymous *vs.* Radam, 565 Phil. 321 (2007) 209
Araneta *vs*. Court of Appeals, G.R. No. 95253,
July 10, 1992, 211 SCRA 390, 398-399 .... 157, 159
Araullo *vs*. Aquino, G.R. No. 209287,
July 1, 2014 .... 799, 809, 811, 817, 826, 835-836
Arcenas *vs*. Cinco, 165 Phil. 741 (1976) 795
Arigo *vs.* Swift, G.R. No. 206510,
Sept. 16, 2014 .... 686-687, 689, 693

Page

Asiaworld Properties Philippine Corporation *vs*. Commissioner of Internal Revenue, G.R. No. 171766, July 29, 2010, 626 SCRA 172, 179 389
Asiaworld Properties Philippine Corporation *vs*. Commissioner of Internal Revenue, 640 Phil. 230 (2010) 404, 406, 412
Association of Trade Unions *vs*. Hon. Abella, 380 Phil. 6, 20 (2000) 423
Atlas Consolidated Mining *vs*. Factoran, Jr., 238 Phil. 48 (1987) 705
Atlas Consolidated Mining and Development Corporation *vs.* Commissioner of Internal Revenue, 569 Phil. 483, 494 (2008) 388
Ayala Land, Inc. *vs*. Castillo, G.R. No. 178110, June 15, 2011, 652 SCRA 143, 158 203
Bacolod *vs*. People, G.R. No. 206236, July 15, 2013, 701 SCRA 229, 233 67
Banco Filipino Savings and Mortgage Bank *vs*. Court of Appeals, 548 Phil. 32, 36-37 (2007) 388
Banco Filipino Savings and Mortgage Bank *vs*. National Labor Relations Commission, 266 Phil. 770, 780 (1990) 172
Bangus Fry Fisherfolk, et al. *vs*. Lanzanas, G.R. No. 131442, July 10, 2003, 453 Phil. 479, 494 (2003) 541, 676
Bansil *vs*. De Leon, 529 Phil. 144, 148 (2006) 118
Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) *vs*. Commissioner of Internal Revenue, 529 Phil. 785, 794-795 (2006) 397
Bautista *vs*. Juinio, 212 Phil. 307, 321 (1984) 802
Bautista *vs*. Juinio, G.R. No. 50908, Jan. 31, 1984, 127 SCRA 329, 343 816
Bejarasco, Jr. *vs*. People, G.R. No. 159781, Feb. 2, 2011, 641 SCRA 328, 330-331 .... 16, 23, 25
Belgica *vs*. Ochoa, G.R. No. 208566, Nov. 19, 2013, 710 SCRA 1 .... 769, 824
Belle Corporation *vs*. Commissioner of Internal Revenue, 654 Phil. 102 (2011) 405

Page

Bello *vs*. Bonifacio Security Services, Inc.,
G.R. No. 188086, Aug. 3, 2011,
655 SCRA 143, 147-148 315
Bengzon *vs*. Drilon, G.R. No. 103524,
April 15, 1992, 208 SCRA 133 .... 767, 824
Bengzon *vs*. Secretary of Justice,
62 Phil. 912, 916 (1936) 824
BF Homes, Incorporated *vs*. Court of Appeals,
G.R. Nos. 76879 and 77143, Oct. 3, 1990,
190 SCRA 262, 269 158
Biraogo *vs*. Philippine Truth Commission of 2010,
G.R. Nos. 192935 and 193036, Dec. 7, 2010,
637 SCRA 78, 177 .... 757, 768, 812
Blaquera *vs*. Alcala, 356 Phil. 678 (1998) 823
Boracay Foundation *vs*. The Province of Aklan,
G.R. No. 196870, June 26, 2012,
674 SCRA 555, 604 544
BPI-Family Savings Bank, Inc. *vs*. Court of Appeals,
386 Phil. 719 (2000) 393
Brillantes, Jr. *vs*. Commission on Elections,
G.R. No. 163193, June 15, 2004,
432 SCRA 269, 307 762
Buan *Vda. De* Esconde *vs*. Court of Appeals,
323 Phil. 81 (1996) 162
Bugnay Construction & Development Corp. *vs.*
Laron, 257 Phil. 245, 256-257 (1989) 810
Cabantag *vs*. Wolfe, 6 Phil. 273 (1906) 472
Cabauatan *vs*. Venida, A.C. No. 10043,
Nov. 20, 2013, 710 SCRA 328 81
Cano *vs*. Spouses Jumawan,
517 Phil. 123, 129-130 (2006) 44
Canton *vs*. City of Cebu, G.R. No. 152898,
Feb. 12, 2007, 515 SCRA 441, 448 106
Caranza *Vda. de* Saldivar *vs*. Cabanes, Jr.,
A.C. No. 7749, July 8, 2013,
700 SCRA 734, 741 480-481
Career Philippines Shipmanagement, Inc. *vs*. Serna,
G.R. No. 172086, Dec. 3, 2012,
686 SCRA 676, 686 55

Page

Casal *vs*. Commission on Audit, 538 Phil. 634 (2006) 823
Catalan, Jr. *vs*. Silvosa, A.C. No. 7360,
July 24, 2012, 677 SCRA 352 469
Catatista *vs*. NLRC, 317 Phil. 54 (1995) 320
Celestial Nickel Mining Exploration Corporation
vs. Macroasia Corp., 565 Phil. 466 (2007) 287, 290
Chavez *vs*. Judicial and Bar Council, G.R. No. 202242,
April 16, 2013, 696 SCRA 496, 516 795
Chemplex (Phils.), Inc. *vs*. Pamatian,
156 Phil. 408 (1974) 795
Chinese Flour Importers Association *vs*.
Price Stabilization Board, 89 Phil. 439 802
Chua-Qua *vs*. Clave, G.R. No. 49549, Aug. 30, 1990,
189 SCRA 117 207
Coca-Cola Bottlers Phils., Inc. *vs*. del Villar,
646 Phil. 587, 615 (2010) 218
Collantes *vs.* Marcelo, G.R. Nos. 167006-07,
Aug. 14, 2007, 530 SCRA 142 778
Columbia Pictures, Inc. *vs*. Court of Appeals,
329 Phil. 875, 900–902 (1996) 685
Commissioner of Internal Revenue *vs*. Bank of the
Philippine Islands, 609 Phil. 678 (2009) 405, 412
Cebu Toyo Corporation, 491 Phil. 625, 640 (2005) 397
Eastern Telecommunications Philippines, Inc.,
638 Phil. 334 (2010) 410
Far East Bank & Trust Company,
629 Phil.405, 406 (2010) 410
Far East Bank & Trust Company (now Bank
of the Philippine Islands), G.R. No. 173854,
March 15, 2010, 615 SCRA 417, 424 388
McGeorge Food Industries, Inc.,
648 Phil. 413 (2010) 406, 412
Mirant (Philippines) Operations Corporation,
G.R. No. 171742, June 15, 2011,
652 SCRA 80, 93-94 .... 386, 388, 397, 402-403
PERF Realty Corporation (PERF Realty),
579 Phil. 442 (2008) 386, 400, 402
PL Management International Philippines, Inc.,
662 Phil. 431 (2011) 405

Page

San Roque Power Corporation, G.R. No. 187485,
Oct. 8, 2013, 707 SCRA 66 795
San Roque Power Corporation, G.R. Nos. 187485,
196113 and 197156, 690 SCRA 336 775
Solidbank Corp., 462 Phil. 96, 132 (2003) 387
Team (Philippines) Operations Corporation,
G.R. No. 185728, Oct. 16, 2013,
707 SCRA 467, 474 388
The Philippine American Life and General
Insurance Co., 646 Phil. 161 (2010) 405
TMX Sales, Inc., G.R. No. 83736, Jan. 15, 1992;
205 SCRA 184 408
Toledo Power, Inc., G.R. No. 183880, Jan. 20, 2014,
714 SCRA 276 397
Commissioner *vs*. Team Sual Corporation,
G.R. No. 194105, Feb. 5, 2014, 715 SCRA 748, 503 410
Concrete Solutions, Inc./Primary Structures Corporation
vs. Cabusas, G.R. No. 177812, June 19, 2013,
699 SCRA 44, 56-57 322
Confederation of Sugar Producers Association, Inc. *vs*.
Department of Agrarian Reform (DAR),
548 Phil. 498, 534 (2007) 398
Consumido *vs*. Ros, 555 Phil. 652, 658 (2007) 685
Conte *vs.* Commission on Audit, G.R. No. 116422,
Nov. 4, 1996, 264 SCRA 19 821
Cosca *vs*. Palaypayon, Sept. 30, 1994,
273 SCRA 249, 269 93
Court of Appeals *vs.* Manabat, Jr., A.M. No. CA-11-24-P,
Nov. 16, 2011, 660 SCRA 159, 165 118
Cruz *vs*. Court of Appeals, G.R. No. 123340,
Aug. 29, 2002, 388 SCRA 72, 80-81 103
Sec. of Environment & Natural Resources,
400 Phil. 904, 1012 (2000) 625
Villar, 427 Phil. 229, 234-235 (2002) 117
Crystal Shipping, Inc. *vs*. Natividad,
510 Phil. 332 (2005) 250
Cuaycong, et al. *vs*. Cuaycong, et al.,
129 Phil. 439 (1967) 163

Page

Culili *vs*. Eastern Telecommunications Philippines, Inc.,
G.R. No. 165381, Feb. 9, 2011,
642 SCRA 338, 361 219
Dagala *vs*. Queseda, Jr., A.C. No. 5044,
Dec. 2, 2013, 711 SCRA 206 80
David *vs.* Arroyo, G.R. No. 171396, May 3, 2006,
489 SCRA 160 812
Macapagal-Arroyo, G.R. No. 171396, May 3, 2006,
489 SCRA 160 263
Rivera, 464 Phil. 1006 (2004) 38
De Agbayani *vs*. Philippine National Bank,
148 Phil. 443, 447 (1971) 802
De Jesus *vs*. Estate of Dizon, 418 Phil. 768 (2001) 355
De Leon *vs.* Court of Appeals, 343 Phil. 254 (1997) 685
Del Mundo *vs*. Capistrano, A.C. No. 6903,
April 16, 2012, 669 SCRA 462, 469 79
Dela Cruz *vs*. Gracia, 612 Phil. 167, 179-180 (2009) 358
Dela Peña *vs*. Sia, 526 Phil. 8, 18 (2006) 94
Delos Santos *vs*. Court of Appeals, G.R. No. 169498,
Dec. 11, 2008, 573 SCRA 690, 700 107
Development Bank of the Philippines *vs*.
Court of Appeals, 348 Phil. 15, 31 (1998) 161
Divine Word High School *vs*. NLRC,
227 Phil. 322 (1986) 218
Eastern Telecommunications Philippines, Inc. *vs*.
Commissioner of Internal Revenue, G.R. No. 168856,
Aug. 29, 2012, 679 SCRA 305, 316 387
Eastridge Golf Club, Inc. *vs*. Eastridge Golf Club, Inc.,
Labor Union-Super, et al., 585 Phil. 88, 101 (2008) 176
Edquibal *vs.* Ferrer, Jr., 491 Phil. 1 (2005) 80
Endencia, et al. *vs*. David, G.R. Nos. L-6355-56,
93 Phil. 696 (1953) 761
Energy Regulation Board *vs*. Court of Appeals,
409 Phil. 36, 47-48 (2001) 802
Escareal *vs*. National Labor Relations Commission,
G.R. No. 99359, Sept. 2, 1992, 213 SCRA 472, 489 215
Espina *vs*. Court of Appeals, 548 Phil. 255, 275 (2007) 320
Estrada *vs.* Escritor, 455 Phil. 411 (2003) 208

Page

Eureka Personnel & Management Services, Inc. *vs*.
Valencia, 610 Phil. 444, 453 (2009) 22
Ever Electrical Manufacturing, Inc. (EEMI) *vs*.
Samahang Manggagawa ng Ever Electrical/NAMAWU
Local 224, G.R. No. 194795, June 13, 2012,
672 SCRA 562, 570 253
Executive Secretary *vs.* Gordon, 359 Phil. 266 (1998) 141
Executive Secretary *vs.* Southwing Heavy Industries, Inc.,
518 Phil. 103 (2006) 646
Express Investments III Private Ltd. *vs*. Bayantel
Communications, Inc., G.R. Nos. 175418-20,
Dec. 5, 2012 274
Far East Bank & Trust Co. *vs*. Court of Appeals,
513 Phil. 148 (2005) 409
Fil-Pride Shipping Company, Inc., et al. *vs*.
Balasta, G.R. No. 193047, March 3, 2014 58
Filsystems, Inc. *vs*. Puente, 493 Phil. 923, 932 (2005) 423
Finasia Investments and Finance Corp. *vs*.
Court of Appeals, G.R. No. 107002,
Oct. 7, 1994, 237 SCRA 446, 450–451 158
Francisco, Jr. *vs*. The House of Representatives,
460 Phil. 830, 842, 882-883, 891 (2003) 806-807
Frias *vs*. Atty. Lozada, 513 Phil. 512, 521-522 (2005) 495
Fujitsu Computer Products Corporation of the Philippines
vs. Court of Appeals, 494 Phil. 697, 728 (2005) 324
G&S Transport Corporation *vs*. Infante,
559 Phil. 701, 709 (2007) 205
Galaxie Steel Workers Union (GSWU-NAFLU-KMU)
vs. NLRC, 535 Phil. 675, 685 (2006) 320
Gamboa *vs*. Teves, G.R. No. 176579, Oct. 9, 2012,
682 SCRA 397, 435 294
Gamboa *vs.* Teves, G.R. No. 176579, June 28, 2011,
652 SCRA 690, 723, 726 .... 295, 297
Garcia *vs*. Chairman, Commission on Audit,
G.R. No. 75025, Sept. 14, 1993, 226 SCRA 356 472
Garcia *vs*. Villar, G.R. No. 158891, June 27, 2012,
675 SCRA 80 160

Page

Garza *vs*. Coca-Cola Bottlers Philippines, Inc.,
G.R. No. 180972, Jan. 20, 2014,
714 SCRA 251, 274-275 220
Golden Ace Builders *vs*. Talde,
634 Phil. 364, 369-370 (2010) 324
Goma *vs*. Pamplona Plantation Incorporated,
579 Phil. 402, 413 (2008) 423
Gonzales *vs*. Climax Mining Ltd.,
492 Phil. 682 (2005) 286, 290
Government Service Insurance System *vs*. Lopez,
610 Phil. 128, 137-138 (2009) 340
GSP Manufacturing Corporation *vs.* Cabanban,
527 Phil. 452, 454 (2006) 321-322
Gutierrez *vs*. Quitalig, 448 Phil. 469, 481 (2003) 94
Heirs of Gamboa *vs.* Teves, G.R. No. 176579,
Oct. 9, 201 274
Heirs of Malabanan *vs*. Republic of the Philippines,
G.R. No. 179987, Sept. 3, 2013, 704 SCRA 561, 580 450
Heirs of Maria de la Cruz y Gutierrez *vs*.
Court of Appeals, 261 Phil. 771 163
Heirs of Rafael Magpily *vs*. De Jesus,
511 Phil. 14, 25 (2005) 45
Hernandez *vs*. NLRC (Fifth Division),
257 Phil. 275, 282 (1989) 323
Home Guaranty Corp. *vs*. R-II Builders, Inc.,
and NHA, G.R. No. 192649, March 9, 2011,
640 SCRA 219, 243 10
Imbong *vs.* Ochoa, G.R. No. 204819,
April 8, 2014 807-808
In re Atty. Parcasio, 161 Phil. 437 (1976) 471
In Re: Delayed Remittance of Collections of Odtuha,
445 Phil. 220, 224 (2003) 93
In Re: Report of COA on the shortage of the
Accountabilities of Clerk of Court Lilia S. Buena,
MTCC, Naga City, 348 Phil. 1 (1998) 93
INC Shipmanagement, Inc. *vs*. Moradas,
G.R. No. 178564, Jan. 15, 2014,
713 SCRA 475, 499-500 206

Page

Indino *vs*. NLRC (Second Division),
258 Phil. 792, 800 (1989) 177
Industrial Timber Corporation *vs*. Ababon,
520 Phil. 522, 527-528 182
Insular Bank of Asia and Americas Employees Union
vs. Inciong, 217 Phil. 629 (1984) 821
International Hardware, Inc. *vs*. National Labor
Relations Commission (Third Division),
257 Phil. 261 (1989) 172
International Rice Research Institute *vs.* National
Labor Relations Commission, G.R. No. 97239,
May 12, 1993, 221 SCRA 760 .... 467, 469
Inter-Orient Maritime, Incorporated *vs*.
Candava, G.R. No. 201251, June 26, 2013,
700 SCRA 174, 181 54
J.A.T. General Services *vs*. NLRC,
465 Phil. 785, 795 (2004) 320
Jimenez *vs*. National Labor Relations Commission,
326 Phil. 89, 95 (1996) 395
Jinalinan Technical School, Inc. *vs*. NLRC
(Fourth Div.), 530 Phil. 77, 82 (2006) 205
Joy Mart Consolidated Corp. *vs*. Court of Appeals,
G.R. No. 88705, June 11, 1992, 209 SCRA 738 141
Junio *vs.* Atty. Grupo, 423 Phil. 808, 816 (2001) 495
Katague *vs*. Ledesma, A.M. No. P-12-3067,
July 4, 2012, 675 SCRA 527, 535 118
Kestrel Shipping Co., Inc. *vs.* Munar,
G.R. No. 198501, Jan. 30, 2013, 689 SCRA 795 243
Kilosbayan *vs*. Guingona, G.R. No. 113375,
May 5, 1994, 232 SCRA 110 812
Kilosbayan, Incorporated *vs*. Morato,
316 Phil. 652, 696 (1995) 810
Labagala *vs*. Santiago, 422 Phil. 699, 708 (2001) 358
Labor *vs.* NLRC, 318 Phil. 219, 240 (1995) 321, 323
Lacson *vs*. Perez, 410 Phil. 78 (2001) 263
Lad *vda. De* Dominguez *vs.* Agleron,
A.C. No. 5359, March 10, 2014 79

Page

Lagua *vs*. The Hon. Court of Appeals,
G.R. No. 173390, June 27, 2012,
675 SCRA 176, 181 22
Lambert Pawnbrokers and Jewelry Corporation *vs*.
Binamira, G.R. No. 170464, July 12, 2010,
624 SCRA 705, 720 219-220
League of Cities of the Philippines *vs*. Commission
on Elections, G.R. Nos. 176951, et al., Aug. 24, 2010,
628 SCRA 819, 832 795
Leonis Navigation Co., Inc., et al. *vs*. Villamater
and/or The Heirs of the Late Catalino U.
Villamater, et al., 628 Phil. 81, 100 (2010) 253
Leopard Security and Investigation Agency *vs*.
Quitoy, G.R. No. 186344, Feb. 20, 2013,
691 SCRA 440, 450-451 217
Lidasan *vs*. Comelec, G.R. No. L-28089,
Oct. 25, 1967, 21 SCRA 479, 510 815
Lima Land, Inc., et al. *vs*. Cuevas,
635 Phil. 36 (2010).. 324
Lina, Jr. *vs*. Paño, 416 Phil. 438, 449-450 (2001) 644
Lirios *vs*. Oliveros, 323 Phil. 318 (1996) 95
Lopez *vs*. Court of Appeals, 594 Phil. 436 (2008) 164
Lopez Sugar Corporation *vs*. Federation of Free
Workers, G.R. Nos. 75700-01, Aug. 30, 1990,
189 SCRA 179, 186 177
Lozano *vs*. People, G.R. No. 165582, July 9, 2010,
624 SCRA 597, 608 67-68
Lui Enterprises, Inc. *vs*. Zuellig Pharma Corporation,
G.R. No. 193494, March 12, 2014 183-184
Luzon Development Bank *vs*. Conquilla,
507 Phil. 509, 523 (2005) 142
LVN Pictures Employees and Workers Association
(NLU) *vs*. LVN Pictures, Inc., 146 Phil. 153 (1970) 178
Mac Adams Metal Engineering Workers
Union-Independent *vs*. Mac Adams Metal Engineering,
460 Phil. 583, 590 (2003) 176, 320
Macahilig *vs*. National Labor Relations Commission,
563 Phil. 683, 690 (2007) 316

Page

Macasero *vs*. Southern Industrial Gases Philippines
and/or Lindsay, 597 Phil. 494, 501 (2009) 324
Macaspac *vs*. Puyat, Jr., 497 Phil. 161, 174 (2005) 42
Maersk Filipinas Crewing, Inc./Maersk
Services Ltd. *vs*. Mesina, G.R. No. 200837,
June 5, 2013, 697 SCRA 601, 608 253
MAM Realty Development Corporation *vs*. NLRC,
314 Phil. 838, 844-845 (1995) 325
Manatad *vs*. Philippine Telegraph and Telephone
Corporation, 571 Phil. 494 (2008) 178
Manila Metal Container Corporation *vs*. Philippine
National Bank 540 Phil. 451, 475 (2006) 338, 340
Maralit *vs*. PNB, 613 Phil. 270, 288-289 (2009) 206
Marcelo *vs*. Bungubung, et al.,
575 Phil. 538, 556 (2008) 215
Marival Trading, Inc. *vs*. National Labor Relations
Commission, 552 Phil. 762, 782 (2007) 324
Maya Farms Employees Organization *vs*. NLRC,
G.R. No. 106256, Dec. 28, 1994, 239 SCRA 508 320
Medado *vs*. Heirs of the Late Antonio Consing,
G.R. No. 186720, Feb. 8, 2012, 665 SCRA 534, 543 315
Mendoza *vs*. Germino, G.R. No. 165676, Nov. 22, 2010,
635 SCRA 537, 545 37
MMDA *vs*. Concerned Residents of Manila Bay,
G.R. Nos. 171947-48, Dec. 18, 2008 682
Montemayor *vs*. Bundalian, 453 Phil. 158, 167 (2003) 215
Montoya *vs*. Transmed Manila Corp./Mr. Ellena, et al.,
613 Phil. 696, 707 (2009) 205
Morales *vs*. Paredes, 55 Phil. 565, 567 856
Municipality of Malabang, Lanao del Sur *vs*.
Benito, 137 Phil. 360 (1969) 833
Mutuc *vs*. Commission on Elections, G.R. No. L-32717,
Nov. 26, 1970, 36 SCRA 228, 234-235 767
Nacar *vs*. Gallery Frames, G.R. No. 189871,
Aug. 13, 2013, 703 SCRA 439, 458 .... 185, 220, 254
Nakpil *vs*. Intermediate Appellate Court, G.R. No. 74449,
Aug. 20, 1993, 225 SCRA 456 161
Narra Nickel *vs*. Redmont, G.R. No. 195580,
April 21, 2014, 12 .... 288-289, 291, 293, 295-296

Page

National Power Corporation *vs*. Heirs of Macabangkit Sangkay, G.R. No. 165828, Aug. 24, 2011, 656 SCRA 60, 96 12
Nazareno, et al. *vs*. City of Dumaguete, 607 Phil. 768, 804 (2009) 219
Nazareth *vs*. Villar, G.R. No. 188635, Jan. 29, 2013, 689 SCRA 385 .... 771, 825
New Ever Marketing, Inc. *vs*. Court of Appeals, 501 Phil. 575, 587 (2005) 322
Neypes *vs*. Court of Appeals, G.R. No. 141524, Sept. 14, 2005, 469 SCRA 633 102
NFD International Manning Agents, Inc./Barber Ship Mgmt. Ltd. *vs*. Illescas, 646 Phil. 244, 265 (2010) 253
North Davao Mining Corporation *vs*. NLRC, 325 Phil. 202 (1996) 178
O'Laco *vs*. Co Cho Chit, G.R. No. 58010, March 31, 1993, 220 SCRA 656, 663 163
Obosa *vs*. Court of Appeals, 334 Phil. 253, 273-274 (1997) 21
Office of the Court Administrator *vs*. Bawalan, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408 95
Caballero, A.M. No. P-05-2064 (Formerly A.M. OCA I.P.I. No. 05-7-449-RTC, March 2, 2010, 614 SCRA 21, 38 96
Fortaleza, 385 SCRA 293, 303 (2002) 95
Galo, 373 Phil. 483, 490 (1999) 93, 95
Omni Hauling Services, Inc. *vs*. Bon, G.R. No. 199388, Sept. 3, 2014 420-421
Ong *vs*. Yap, 492 Phil. 188, 196-197 (2005) 396
Oposa *vs*. Factoran, G.R. No. 101083, July 30, 1993, 224 SCRA 792 (1993) 659, 687
Oriental Shipmanagement Co., Inc. *vs*. Nazal, G.R. No. 177103, June 3, 2013, 697 SCRA 51, 61 243
Ortiz *vs*. San Miguel, 582 Phil. 627, 640 (2008) 8
Overgaard *vs*. Atty. Valdez, 588 Phil. 422 (2008) 472
P.J. Lhuillier, Inc. *vs*. National Labor Relations Commission, 497 Phil. 298, 311 (2005) 322

Page

Palada *vs*. Solidbank Corporation, G.R. No. 172227,
June 29, 2011, 653 SCRA 10, 11 219
Palting *vs*. San Jose Petroleum, Inc., G.R. No. L-14441,
Dec. 17, 1966, 18 SCRA 924 279
Pangasinan Electric Cooperative I *vs*.
Atty. Montemayor, 559 Phil. 438 (2007) 80
Pantranco Employees Ass'n. (PEA-PTGWO), et al.
vs. NLRC, et al., 600 Phil. 645, 663 (2009) 254
Paseo Realty & Development Corporation *vs*.
Court of Appeals, 483 Phil. 254 (2004) 406, 409
Pates *vs*. Commission on Elections, G.R. No. 184915,
June 30, 2009, 591 SCRA 481, 488 106
Peñalber *vs*. Ramos, G.R. No. 178645,
Jan. 30, 2009, 577 CRA 509, 526-527 396
People *vs*. Abedin, G.R. No. 179936,
April 11, 2012, 669 SCRA 322, 336 372
Agacer, G.R. No. 177751, Dec. 14, 2011,
662 SCRA 461, 472 460
Amodia, 602 Phil. 889, 911-912 (2009) 459
Anabe, G.R. No. 179033, Sept. 6, 2010,
630 SCRA 10 70
De Guzman, G.R No. 177569, Nov. 28, 2007,
539 SCRA 306 370
De Jesus, G.R. No. 198794, Feb. 6, 2013,
690 SCRA 180, 200 372
Dela Paz, 569 Phil. 684, 700 (2008) 461
Diwa, G.R. No. 194253, Feb. 27, 2013,
692 SCRA 260, 268 372
Gambao, G.R. No. 172707, Oct. 1, 2013,
706 SCRA 508, 535 462
Gaspar, G.R. No. 192816, July 26, 2011,
653 SCRA 673, 688 370
Gonzales, G.R. No. 182417, April 3, 2013,
695 SCRA 123, 130 371
Jabinal, 154 Phil. 565 (1974) 819-820
Lagman, G.R. No. 197807, April 16, 2012,
669 SCRA 512, 522 457
Maceren, G.R. No. L-32166, Oct. 18, 1977,
79 SCRA 450 .... 802, 820

Page

Mapa, 127 Phil. 624 (1967) 819-820
Modesto, G.R. No. L-25484, Sept. 21, 1968,
25 SCRA 36 65
Nicolas, 448 Phil. 253, 264-265 (2003) 461
Nimuan, G.R. No. 182918, June 6, 2011,
650 SCRA 597, 604-605 459
Santos, 63 Phil. 300 (1936) 802
Sesbreño, 372 Phil. 762 (1999) 470
Tolentino, 570 Phil. 255, 284 (2008) 462
Unisa, G.R. No. 185721, Sept. 28, 2011,
658 SCRA 305, 328-329 369
Phil. Industrial Security Agency Corp. *vs*. Dapiton,
377 Phil. 951, 959 & 960 (1999) 321
Philam Asset Management, Inc. *vs.* Commissioner
of Internal Revenue (Philam),
514 Phil. 147 (2005) 386, 399, 406
Philex Mining Corp. *vs*. Zaldivia,
150 Phil. 547 (1972) 286, 290-291
Philippine Agila Satellite, Inc. *vs.* Trinidad-Lichauco,
G.R. No. 142362, May 3, 2006, 489 SCRA 22 779
Philippine Apparel Workers Union *vs*.
National Labor Relations Commission,
G.R. No. 50320, July 31, 1981, 106 SCRA 444 821
Philippine Bank of Communications *vs*.
Commissioner of Internal Revenue,
361 Phil. 916 (1999) 405
Philippine Constitutional Association *vs*. Enriquez,
G.R. No. 113105, Aug. 19, 1994,
235 SCRA 506, 522, 532 .... 813, 815-816
Philippine National Bank *vs.* Court of Appeals,
G.R. No. 97995, Jan. 21, 1993, 217 SCRA 347, 358 163
Philippine National Bank *vs.* Heirs of Estanislao
Militar, G.R. No. 164801 and 165165, June 30, 2006,
494 SCRA 308, 319 778
Philippine Overseas Telecommunications Corporation
vs. Gutierrez, 537 Phil. 682, 691 (2006) 43
Philippine Phosphate Fertilizer Corporation *vs*.
Commissioner of Internal Revenue,
500 Phil. 149, 163 (2005) 387

Page

Philippine Rural Reconstruction Movement (PRRM)
vs. Pulgar, 637 Phil. 244, 251 (2010) 316
Philippine Tobacco Flue-Curing & Redrying Corp.
vs. NLRC, 360 Phil. 218, 236 (1998) 177
Planters Products, Inc. *vs*. Fertiphil Corporation,
G.R. No. 166006, March 14, 2008, 548 SCRA 485 833
Province of Batangas *vs*. Romulo, G.R. No. 152774,
May 27, 2004, 429 SCRA 736 263
Province of North Cotabato *vs*. Government of the
Republic of the Philippines Peace Panel on
Ancestral Domain (GRP), G.R. No. 183591,
Oct. 14, 2008, 568 SCRA 402, 460 263
Quadra *vs*. Court of Appeals,
529 Phil. 218, 223-224 (2006) 218
Quijano *vs*. Mercury Drug Corporation,
354 Phil. 112, 121 (1998) 217
R.P. Dinglasan Construction, Inc. *vs*. Atienza,
477 Phil. 305, 314 (2004) 321
Rafael *vs*. Sualog, 577 Phil. 159, 169 (2008) 118
Re: Financial Audit on the Accountabilities
of Mr. Restituto A. Tabucon, Jr., Former Clerk
of Court II of the MCTC, Ilog, Candoni,
Negros Occidental, 504 Phil. 512, 515 (2005) 94
Re: Misappropriation of the Judiciary Fund
Collections by Juliet C. Banag, Clerk of Court,
MTC, Plaridel, Bulacan, 465 Phil. 24, 34 (2004) 95
Re: Report on the Financial Audit conducted
in the Books of Accounts of Atty. Raquel G. Kho,
Clerk of Court IV, RTC, Oras, Eastern Samar,
A.M. No. P-06-2177, Jan. 27, 2006, 493 SCRA 44 95
Re: SC Decision Dated May 20, 2008 in
G.R. No. 161455 Under Rule 139-B of the
Rules of Court *vs*. Atty. Rodolfo D. Pactolin,
A.C. No. 7940, April 24, 2012, 670 SCRA 366 469
Reahs Corporation *vs*. NLRC,
337 Phil. 698, 705, 709 (1997) 177, 184, 320
Republic *vs*. Sandiganbayan, 325 Phil. 762, 810 (1996) 412
Sese, G.R. No. 185092, June 4, 2014 446

Page

Zurbaran Realty and Development Corporation,
G.R. No. 164408, March 24, 2014 ... 446
Reyes *vs*. Pablico, 538 Phil. 10, 20 (2006) ... 118
Reyes *vs*. Zamora, 179 Phil. 71, 89 (1979) ... 322
Reyna *vs*. Commission on Audit, G.R. No. 167219,
Feb. 8, 2011, 647 SCRA 210, 225 ... 105
Rivera *vs*. David, 518 Phil. 445 (2006) ... 35
Roa *vs*. Atty. Moreno, 633 Phil. 1, 8 (2010) ... 497
Robern Development Corporation *vs*. People's
Landless Association, G.R. No. 173622,
March 11, 2013, 693 SCRA 24, 26 ... 343
Rodrigo *vs*. Arcilla, 525 Phil. 590 (2006) ... 164
Romero *vs*. Villarosa, Jr., A.M. No. P-11-2913,
April 12, 2011, 648 SCRA 32, 41-42 ... 118, 122
Rosario, Jr. *vs*. De Guzman, G.R. No. 191247,
July 10, 2013, 701 SCRA 78 ... 8, 13-14
Rubberworld (Phils.), Inc. *vs*. NLRC,
365 Phil. 273, 276-277 (1999) ... 158
Salmorin *vs*. Dr. Zaldivar, 581 Phil. 531, 537 (2008) ... 44
Salomon *vs*. Intermediate Appellate Court,
263 Phil. 1068, 1077 (1990) ... 570
Samahan ng mga Manggagawa sa Bandolino *vs*.
NLRC, 341 Phil. 635, 646 (1997) ... 321
Samarca *vs.* Arc-Men Industries, Inc.,
459 Phil. 506, 516 (2003) ... 321
San Juan *vs.* Civil Service Commission,
G.R. No. 92299, April 19, 1991, 196 SCRA 69 ... 713
San Miguel Properties Philippines, Inc. *vs.*
Huang, 391 Phil. 636, 643-644 (2000) ... 338
Sanchez *vs*. Commission on Audit, 575 Phil. 428 (2008) ... 813
Sangwoo Philippines, Inc. *vs*. Sangwoo
Philippines, Inc. Employees Union-Olalia,
G.R. No. 173154, Dec. 9, 2013,
711 SCRA 618, 627-629 ... 172, 179, 181-183, 320
SANLAKAS *vs*. Executive Secretary Reyes,
466 Phil. 482 (2004) ... 263
Santos *vs.* Commission on Elections,
447 Phil. 760 (2003) ... 141

Page

Santos *vs*. NLRC, 350 Phil. 560 (1998) 211
Seagull Maritime Corporation *vs*. Dee,
548 Phil. 660 (2007) 250
Senate of the Philippines *vs*. Ermita,
G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35 807
Serrano de Agbayani *vs*. Philippine National Bank,
148 Phil. 443, 447-448 (1971) 833
Seven Star Textile Company *vs*. Dy,
541 Phil. 468, 479 (2007) 215
Sibulo *vs*. Ilagan, 486 Phil. 197, 203-204 (2004) 81
Sipin-Nabor *vs*. Baterina, 412 Phil. 419 (2001) 77, 81
Social Justice Society (SJS) *vs*. Dangerous
Drugs Board, G.R. Nos. 157870, 158633 and
161658, Nov. 3, 2008, 570 SCRA 410, 422-423 767
Somerville Stainless Steel Corporation *vs*. NLRC,
350 Phil. 859, 869 (1998) 177
Soriano *vs*. Atty. Dizon, 515 Phil. 635 (2006) 468
Sotto *vs*. Teves, 175 Phil. 343 (1978) 163
Spouses Alvendia *vs*. Intermediate Appellate Court,
260 Phil. 265 (1990) 795
Spouses Amurao *vs*. Spouses Villalobos,
524 Phil. 762 (2006) 35, 40
Spouses Sobrejuanite *vs*. ASB Development
Corporation, 508 Phil. 715, 721 (2005) 158
Spouses Soriano *vs*. Reyes,
523 Phil. 1, 16 (2006) 80-81, 496
Starbright Sales Enterprises, Inc. *vs*. Philippine
Realty Corporation, G.R. No. 177936,
Jan. 18, 2012, 663 SCRA 326, 333 341
State Land Investment Corporation *vs*.
Commissioner of Internal Revenue,
566 Phil. 113, 120-122 (2008) 386, 398, 400, 402
Stronghold Insurance Company, Inc. *vs*.
Cuenca, G.R. No. 173297, March 6, 2013,
692 SCRA 473 684-685
Suarez *vs*. Saul, 510 Phil. 400, 406 (2005) 44
Sunga *vs*. Virjen Shipping Corp., et al,
G.R. No. 198640, April 23, 2014 57

Page

Suzuki *vs*. Atty. Tiamson, 508 Phil. 130, 142 (2005)............ 497
Systra Philippines, Inc. *vs*. Commissioner
of Internal Revenue, 560 Phil. 261 (2007)................. 405, 412
Tan *vs*. People, G.R. No. 134298, Aug. 26, 1999,
313 SCRA 220, 231.. 69
Tañada *vs*. Angara, 338 Phil. 546, 574-575 (1997................. 803
Telecommunications and Broadcast Attorneys
of the Philippines, Inc. *vs*. Commission on Elections,
352 Phil. 153, 168 (1998) 810
Teoxon *vs*. Member of the Board of Administrators,
G.R. No. L-25619, June 30, 1970, 30 SCRA 585.............. 802
The City of Manila *vs*. Entote,
156 Phil. 498, 510-511 (1974) 856
The National Liga ng mga Barangay *vs*.
Paredes, 482 Phil. 331 711
Top Rate Construction & General Services, Inc.
vs. Paxton Development Corporation,
457 Phil. 740 (2003) 141
Toshiba Information Equipment (Phils.), Inc. *vs*.
Commissioner of Internal Revenue, G.R. No. 157594,
March 9, 2010, 614 SCRA 526, 561 397
Traders Royal Bank Employees Union-Independent *vs*.
NLRC, 336 Phil. 705, 713-714 (1997)...................... 10-11, 13
Trendline Employees Association-Southern
Philippines Federation of Labor (TEA-SPFL) *vs*.
NLRC, 338 Phil. 681, 686 (1997)... 321
Umipig *vs*. People, G.R. Nos. 171359, 171755,
171776, July 18, 2012, 677 SCRA 53, 77........................... 341
United BF Homeowner's Association *vs*.
BF Homes, Inc., 369 Phil. 568 (1999) 703
United Claimants Association of NEA
(UNICAN) *vs.* National Electrification
Administration (NEA), G.R. No. 187107,
Jan. 31, 2012, 664 SCRA 483, 494 219
United International Pictures AB *vs*.
Commissioner of Internal Revenue,
G.R. No. 168331, Oct. 11, 2012, 684 SCRA 23 405
United States *vs*. Barrias, 11 Phil. 327 (1908)........................ 802
United States *vs*. Tupasi Molina, 29 Phil. 119 (1914)........... 802

Page

UST Faculty Union *vs*. University of Sto. Tomas, et al.,
602 Phil. 1016, 1025 (2009) 243
Uy *vs*. Tansinsin, 610 Phil. 709, 716 (2009)............................. 80
Valencia *vs*. Court of Appeals,
449 Phil. 711, 736 (2003) 44
Vda. de Mapa *vs*. Court of Appeals, G.R. No. L-38972,
Sept. 28, 1987, 154 SCRA 294, 300 163
Veloso *vs*. Commission on Audit, G.R. No. 193677,
Sept. 6, 2011, 656 SCRA 767, 776 822
Vergara *vs*. Hammonia Maritime Services,
Inc., et al., 588 Phil. 895 (2008) 249
Victorias Milling Co. *vs*. Social Security Commission,
114 Phil. 555 (1962) 802
Villaflores *vs*. Limos, 563 Phil. 453, 460 (2007) 80
Villanueva *vs*. Adre, 254 Phil. 882 (1989) 141
Villarica Pawnshop, Inc. *vs.* Gernale,
601 Phil. 66, 78 (2009)... 142
Viscal Development Corporation *vs*.
Dela Cruz-Buendia, A.M. No. P-12-3097,
Nov. 26, 2012, 686 SCRA 299, 305 117-118
Wallem Maritime Services, Inc. *vs*. Tanawan,
G.R. No. 160444, Aug. 29, 2012, 679 SCRA 255 251
XYST Corporation *vs*. DMC Urban Properties
Development, Inc., 612 Phil. 116, 123-124 (2009) 338
Yap *vs*. Chua, G.R. No. 186730, June 13, 2012,
672 SCRA 419, 428 142
Young *vs*. Keng Seng, 446 Phil. 823, 833 (2003) 141-142

II. FOREIGN CASES

Baker *vs*. Carr, 369 U.S. 186, 7 L.Ed.2d 633 (1962) 810
Bender *vs*. Cushing, 14 Ohio Dec. 65, 70................................ 780
Norton *vs*. Shelby Conty, 118 US 425, 6 S. Ct. 1121,
30 L. Ed. 178 (1886) 799, 839

Page

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A. CONSTITUTION

1987 Constitution
Art. II, Sec. 16 .... 538, 714
Sec. 22 635
Sec. 25 710
Sec. 26 783
Art. III, Secs. 1, 9-10, 15, 22 783
Art. IV, Sec. 1 783
Art. V 639
Art. VI, Sec. 5(2) 636
Sec. 24 .... 800, 843-844
Secs. 27(2), 29 800
Sec. 25 798
(1) 827, 845
(2) 816
(5) 760, 767, 769, 771-772, 781-782, 804
Sec. 26 843
(1) 815
Sec. 27, par. 1 823
Sec. 29, par. 1 .... 816, 823, 842, 844, 861, 879
Art. VII, Sec. 1 843
Sec. 5 844
Sec. 17 .... 843-844, 856
Sec. 18 783
Sec. 19 .... 472, 783
Sec. 22 .... 793, 818, 843, 890
Art. VIII, Sec. 1 .... 804, 806-807
Sec. 3 791
Sec. 5(5) 537
Sec. 11 484
Art. IX, Sec. 1 783
Art. X, Sec. 2 .... 644, 710, 712
Secs. 4, 10 711

Page

Art. XII, Sec. 2 .... 264-265, 282-283, 285
Sec. 5 635
Sec. 11 783
Art. XIII 783
Sec. 6 635
Art. XIV, Sec. 5(2) 783
Sec. 17 635
Art. XVI, Sec. 12 635

B. STATUTES

Administrative Code
Sec. 28, Chapter 4, Book VI 766
Sec. 38 849
Chapter 5, Book VI 763, 765, 873
Sec. 39, Chapter 5, Book VI 763, 803, 831, 882
Secs. 51-52, Chapter 6, Book VI 773
Batas Pambansa
B.P. Blg. 129, Sec. 33 36
B.P. Blg. 232 (Education Act of 1982) 202-203
Secs. 3, 69 204
Secs. 57, 70 203
Civil Code, New
Arts. 745, 749 588
Art. 978 359
Art. 1145 11
Arts. 1443, 1450, 1454-1455 163
Art. 1456 163-165
Art. 1643 633
Art. 2067 157
Arts. 2088, 2137 160
Art. 2154 398
Code of Professional Responsibility
Canon 7 .... 491-492, 496, 497
Canon 16 .... 491-492, 494
Rule 16.04 .... 488, 491-492, 494-495
Canon 17 .... 478, 481, 483
Canon 18 .... 79, 481, 483

Page

Rule 18.03 .... 79, 476, 478, 481, 483
Rule 18.04 .... 79, 746, 478, 481, 483
Canon 20, Rule 20.01 12
Commonwealth Act
C.A. No. 141 (Public Land Act), Sec. 48 445
Corporation Code
Sec. 6 286
Sec. 96 268
Executive Order
E.O. No. 129-A (Modifying Order 129
Reorganizing and Strengthening the
Department of Agrarian Reform and Other
Purposes), Sec. 13 36
E.O. No. 292, Sec. 2(3), Book VI, Chapter I 843
Sec. 3, Book VI, Chapter 2 843
Sec. 35, Book VI, s. 1987, Chapter 5 .... 774, 863
Family Code
Art. 170 .... 354, 358
Art. 171 354
Art. 172 .... 350, 354, 357
Labor Code
Art. 111 219
(1) 184
Art. 222(2) 184
Art. 282 .... 196, 199
Art. 283 .... 172, 176-177, 180-181, 183, 185, 217
Art. 284 217
Art. 294 formerly Art. 280 420-421
Art. 297 .... 172, 177, 180
Local Government Code
Secs. 26-27 .... 526, 530-531, 535-536, 541, 584
Sec. 117 655
Secs. 447, 458 101
National Internal Revenue Code
Sec. 6 409
Sec. 69 401-402
Sec. 75 407
Sec. 76 .... 382, 388, 399, 401, 403-405, 407

Page

Sec. 127(B) 267
Sec. 232 408
Penal Code, Revised
Art. 48 .... 427, 435, 437
Art. 63 462
Art. 94 472
Art. 172 435
Art. 248 457
Arts. 308-309 61
Art. 315 436
par. 1(b) 17
Presidential Decree
P.D. No. 27 4
P.D. No. 442 .... 172, 420
Arts. 130-131 420
P.D. No. 902-A 152, 154
P.D. No. 1123 821
P.D. No. 1151 .... 588, 596, 659, 662, 683, 695, 700
Secs. 1-2 694
Sec. 3 596
Sec. 4 .... 597, 660, 694, 697-698
P.D. No. 1529, Sec. 14(1) 445
P.D. No. 1586 .... 588, 659, 662, 683, 683, 695, 700
Sec. 2 695
Sec. 4 .... 523, 626, 629, 660, 695
Sec. 5 .... 660-661, 695, 697
Proclamation
No. 2146 698
Republic Act
R.A. No. 3844 (Agricultural Reform Code) as amended
by R.A. Nos. 6389 and 10374, Sec. 10 42-43
Sec. 28 43
R.A. No. 6657 (Comprehensive Agrarian Reform
Law of 1988), Sec. 3(d) 36
Sec. 50 36
R.A. No. 6831, Sec. 16 832
R.A. No. 7160 .... 101, 683
Sec. 6 710-711

Page

Sec. 7 710
Sec. 26 683
Sec. 27 684
R.A. No. 7227 .... 522, 536-537, 641-642, 649
Secs. 11-12 650
Sec. 12 (a) 645-646
Sec. 13 .... 647, 651, 711
Sec. 13 b(4) 652
Sec. 14 .... 709, 712
Sec. 17 711
R.A. No. 7942 265
Sec. 77 .... 287, 289
R.A. No. 8179 (Foreign Investments Act) 293
Sec. 3(a) 294
R.A. No. 8291, Sec. 11, par. (b) 86
R.A. No. 8371 .... 624, 684
Sec. 2(b) 625
Sec. 59 (Indigenous People's Rights Act [IPRA] of 1997) 526, 530, 533, 535-536
Sec. 59, Chapter VIII 531, 623
R.A. No. 8424 .... 403, 408-409
R.A. No. 8749 (Clean Air Act of 1999) 558
R.A. No. 8763 128
R.A. No. 9165 371
Secs. 5, 11 .... 361, 373
R.A. No. 9184 844
Sec. 21 (Government Procurement Reform Act) 102
R.A. No. 9346 462
R.A. No. 10142 (Financial Rehabilitation and Insolvency Act (FRIA) of 2010 152
R.A. No. 10147 .... 859, 870
Sec. 60 .... 829, 843, 846, 852
R.A. No. 10151 (An Act Allowing the Employment of Night Workers) 172, 177, 180
Sec. 5 420
R.A. No. 10155, Sec. 54 .... 829, 843, 845, 852, 859
R.A. No. 10352, Sec. 53 .... 843, 845-846, 852, 859
R.A. No. 10633, Sec. 68 847

Page

Rules of Court, Revised
Rule 3, Sec. 2 684-685
Sec. 3 686
Sec. 4 685
Sec. 12 688-689
Rule 13, Sec. 3 102
Sec. 13 103
Rule 16 380
Rule 34, Sec. 4 155
Rule 39, Sec. 9 118
Sec. 14 119
Rule 42 104-105
Sec. 1 105
Rule 43 541
Rule 45 .... 61, 194, 205, 315, 380, 546
Rule 51, Sec. 10 23
Rule 64 104-105
in relation to Rule 65 101
Sec. 3 105
Sec. 6 104
Rule 65 .... 4, 7, 105, 676, 678, 679, 880
Rule 116, Sec. 1, par. (c) 363
Rule 122, Sec. 6 23
Rule 130, Sec. 36 22
Sec. 49 691
Rule 131, Sec. 3(l) 780
Rule 133, Sec. 5 420
Rule 138, Sec. 27 .... 467, 469
Rule 139-B, Sec. 12 476
Rules on Civil Procedure, 1997
Rule 45 137

C. OTHERS

2009 DARAB Rules of Procedure
Rule II, Sec. 1 37
DENR Administrative Order (DAO) No. 2003-30 541
Sec. 1, Art. I 597

Page

Sec. 3(a), Art. I 598
(b) 599
(d) 591, 626
(f) 695
(h) 598, 621
(k) 599, 698
(p) 600-601
(s), (t) 600
(x) 600, 617
Sec. 5 601
Sec. 5.2.5, Art. II 612
Sec. 5.3, Art. II 643
Sec. 8.3 .... 526, 530, 584, 612
Sec. 8.3, Art II 603
Fisheries Administrative Order
No. 84 821
2000 POEA-SEC
Sec. 20(E) 55
1996 POEA-SEC
Sec. 20 54-55
Interim Rules of Procedure on Corporate Rehabilitation
Rule 3, Sec. 5 154-155
Rule 4, Sec. 2 129
Sec. 6 151-152
Sec. 9 129
NLRC Rules of Procedure
Secs. 4, 6 222
Omnibus Rules Implementing the Labor Code
Book V, Rule XIV, Sec. 2 317
Revised Rules on Administrative Cases in the Civil Service (RRACCS)
Rule 10, Sec. 45(B) (2), (D) (1) 120
Sec. 48 (1), (n) 121
Sec. 49 121
Sec. 50 120
Revised Uniform Rules on Administrative Cases in the Civil Service
Secs. 52, 58 96

Page

Rules of Procedure for Environmental Cases
Rule 2, Sec. 5 659
Rule 3, Sec. 6(1) 577
Rule 7 .... 675, 678-679
Sec. 1 .... 538-539, 670, 682, 690
Sec. 7 (Writ of Kalikasan) 577
Sec. 15 .... 532, 536, 539
Part III 537
Sec. 16 545
Rules to Implement the Labor Code
Sec. 2, Rule IV, Book III 821
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Sec. 2 286
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No. 13-92 94

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Page

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