PHILIPPINE REPORTS

VOL. 775

DECEMBER 9, 2015 TO DECEMBER 16, 2015

VOLUME 775

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

DECEMBER 9, 2015 TO DECEMBER 16, 2015

SUPREME COURT
MANILA
2016

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2016

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 159979. December 9, 2015]

CAPITAL INSURANCE AND SURETY CO., INC., *petitioner, vs.* **DEL MONTE MOTOR WORKS, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; PETITIONER INSURANCE COMPANY CANNOT EVADE LIABILITY UNDER THE COUNTERBOND BY HIDING BEHIND ITS OWN INTERNAL RULES; THE OFFICERS WHO SIGNED THE BONDS WERE PRESUMED TO BE ACTING WITHIN THE SCOPE OF THEIR AUTHORITY IN BEHALF OF THE COMPANY.— The petitioner cannot evade liability under the counterbond by hiding behind its own internal rules. Although a prospective applicant seeking insurance coverage is expected to exercise prudence and diligence in selecting the insurance provider, such responsibility does not require the prospective applicant to know and be aware of the insurer's internal rules, policies and procedure adopted for the conduct of its business. Considering that the petitioner has been a duly accredited bonding company, the officers who signed the bonds were presumed to be acting within the scope of their authority in behalf of the company, and the courts were not expected to verify the limits of the authority of the signatories of the bonds submitted in the regular course of judicial business, in the same manner that the applicants for the bonds were not expected to know the limits of the authority of the signatories.

To insist otherwise is absurd. It is reasonable to hold here, therefore, that as between the petitioner and the respondent, the one who employed and gave character to the third person as its agent should be the one to bear the loss. That party was the petitioner.

2. ID.; ID.; BASIC TENETS OF HONESTY, GOOD FAITH, AND FAIR DEALING REQUIRED INSURANCE COMPANY TO COMMUNICATE RELEVANT FACTS TO THE ASSURED.— [T]he petitioner's argument that the counterbond was invalid because the counterbond was unaccounted for and missing from its custody was implausible. The argument totally overlooks a simple tenet that honesty, good faith, and fair dealing required it as the insurer to communicate such an important fact to the assured, or at least keep the later updated on the relevant facts. A contrary view would place every person seeking insurance at the insurer's mercy because the latter would simply claim so just to escape liability, thus causing uncertainty to the public and defeating the very purpose for which insurance was contracted.

3. ID.; ID.; AN INSURANCE COMPANY WHO CLAIMED THAT THE COUNTERBOND WAS INVALID HAS THE BURDEN OF PROVING SUCH DEFENSE.— The petitioner's contention that there was no evidence to show that the premiums for the counterbond were paid has no merit. To start with, the petitioner did not present any evidence to back up the contention. The bare allegation of non-payment had no weight, for mere allegation, unsubstantiated by evidence, did not equate to proof. In any event, both the RTC and the CA found that the counterbond was approved and signed by both Ancheta and Alub, whose signatures were genuine. If the premiums were not paid, such officers of the petitioner would not have approved the counterbond in the first place. An insurer or bonding company like the petitioner that seeks to defeat a claim on the ground that the counterbond was invalidly issued has the burden of proving such defense. However, the petitioner did not discharge the burden herein. No less than the officers charged with the responsibility of making sure that all forms and records of the petitioner were audited admitted that the missing counterbond was in fact a valid pre-approved form of the Insurance Commission, so that the absence or lack of the

signature of the president did not render the bond invalid. Moreover, Laxa knew that as a matter of long practice both Ancheta and Alub normally signed and approved the counterbonds, regardless of the amounts thereof. She further knew of no rule that limited the authority of Ancheta and Alub to issue and sign counterbonds only up to ₱5,000,000.00.

4. ID.; ID.; THE SECURITY DEPOSIT WAS IMMUNE FROM LEVY OR EXECUTION.— Section 203 of the *Insurance Code* provides as follows: x x x Except as otherwise provided in this Code, **no judgment creditor or other claimant shall have the right to levy upon any securities of the insurer held on deposit under this section or held on deposit pursuant to the requirement of the Commissioner.** The forthright text of provision indicates that the security deposit is exempt from levy by a judgment creditor or any other claimant. This exemption has been recognized in several rulings x x x[.] The simplistic interpretation of Section 203 of the *Insurance Code* by the CA ostensibly ran counter to the intention of the statute and the Court's pronouncement on the matter. We cannot uphold the CA's interpretation, therefore, because the holders or beneficiaries of the policies of an insolvent company would thereby likely end up becoming unpaid claimants. Besides, denying the exemption would potentially pave the way for a single claimant, like the respondent, to short-circuit the procedure normally undertaken in adjudicating the claims against an insolvent company under the rules on concurrence and preference of credits in order to ensure that none could obtain an advantage or preference over another by virtue of an attachment or execution. To allow the respondent to proceed independently against the security deposit of the petitioner would not only prejudice the policy holders and their beneficiaries, but would also annul the very reason for which the law required the security deposit.

5. ID.; ID.; REFUSAL OF THE INSURANCE COMMISSIONER TO RELEASE THE SECURITY DEPOSIT DESPITE THE GARNISHMENT ON EXECUTION IS LEGALLY JUSTIFIED.— The Insurance Commissioner's refusal to release was legally justified. Under Section 191 and Section 203 of the *Insurance Code*, the Insurance Commissioner had the specific legal duty to hold the security deposits for the benefit of all policy holders. In this regard, *Republic v. Del Monte Motors, Inc.* has also

been clear, *viz.*: The Insurance Code has vested the Office of the Insurance Commission with both *regulatory* and *adjudicatory* authority over insurance matters x x x [T]he insurance commissioner has been given a wide latitude of discretion to regulate the insurance industry so as to protect the insuring public. **The law specifically confers custody over the securities upon the commissioner, with whom these investments are required to be deposited. An implied trust is created by the law for the benefit of all claimants under subsisting insurance contracts issued by the insurance company. As the officer vested with custody of the security deposit, the insurance commissioner is in the best position to determine if and when it may be released without prejudicing the rights of other policy holders.** Before allowing the withdrawal or the release of the deposit, the commissioner must be satisfied that the conditions contemplated by the law are met and all policy holders protected. Under the circumstances, the Insurance Commissioner properly refused the request to release issued by the sheriff under the notice of garnishment, and was not guilty of contempt of court of disobedience to the assailed order of December 18, 2002 of the RTC.

APPEARANCES OF COUNSEL

Salonga Hernandez & Mendoza for petitioner.
Francisco Paredes & Morales Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Are the securities deposited by the insurance company pursuant to Section 203 of the *Insurance Code* subject of levy by a creditor? The petitioner, a duly registered insurance company, hereby appeals to seek the reversal of the unfavorable affirmative ruling on this issue of the Court of Appeals (CA) promulgated on September 15, 2003. [1] The CA therein held that the securities

[1] *Rollo*, pp. 31-41; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justice Eubulo G. Verzola (deceased) and Associate Justice Edgardo F. Sundiam (deceased).

were not covered by absolute immunity from liability, but could be made to answer for valid and legitimate claims against the insurance company under its contract.

Antecedents

On March 3, 1997, the respondent sued Vilfran Liner, Inc., Hilaria F. Villegas and Maura F. Villegas in the Regional Trial Court in Quezon City (RTC) to recover the unpaid billings related to the fabrication and construction of 35 passenger bus bodies. It applied for the issuance of a writ of preliminary attachment. Branch 221 of the RTC, to which the case was assigned, issued the writ of preliminary attachment, which the sheriff served on the defendants, resulting in the levy of 10 buses and three parcels of land belonging to the defendants. The sheriff also sent notices of garnishment of the defendants' funds in the Quezon City branches of BPI Family Bank, China Bank, Asia Trust Bank, City Trust Bank, and Bank of the Philippine Island.[2] The levy and garnishment prompted defendant Maura F. Villegas to file an *Extremely Urgent Motion to Discharge Upon Filing of a Counterbond,* attaching thereto CISCO Bond No. 00011-00005/JCL(3) dated June 10, 1997 and its supporting documents purportedly issued by the petitioner.[3] On July 2, 1997, the RTC approved the counterbond and discharged the writ of preliminary attachment.[4]

On January 15, 2002, the RTC rendered its decision in favor of the respondent,[5] holding and disposing:

> Premises considered, this Court hereby renders judgment in favor of the plaintiff ordering the defendants Vilfran Liner, Inc., Hilaria F. Villegas and Maura Villegas jointly and solidarily liable to pay plaintiff the following:

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[2] *Id*. at 33.

[3] *Id*.

[4] *Id*. at 34.

[5] *Id*. at 13.

1. ₱11,835,375.50 including interest as of February 1997, representing the balance of their service contracts with plaintiff on the fabrication and construction of 35 passenger bus bodies.

2. ₱70,000.00, as litigation fees.

3. 25% of the recoverable amount, as attorney's fees; and

4. Costs of suit.

The foregoing judgment shall be enforceable against the counterbond posted by defendant Vilfran Liner, Inc. dated June 10, 1995.

Defendants-third party plaintiffs are entitled to recover from the third party defendants whatever amount is adjudged against the former under the premises. Third party-defendants are directed to reimburse defendants-third party plaintiffs for such monetary judgments adjudged against the latter under the premises.

SO ORDERED. [6]

To enforce the decision against the counterbond dated June 10, 1997, the respondent moved for execution. The RTC granted the motion,[7] over the petitioner's opposition.[8] Serving the writ of execution,[9] the sheriff levied against the petitioner's personal properties, and later issued the notice of auction sale. On August 15, 2002, the sheriff also served a notice of garnishment against the security deposit of the petitioner in the Insurance Commission.[10]

On September 11, 2002, the respondent moved to direct the release by the depositary banks of funds subject to the notice of garnishment from the accounts of the petitioner, and to transfer or release the amount of ₱14,864,219.37 from the petitioner's security deposit in the Insurance

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[6] *Id*.

[7] *Id*. at 95.

[8] *Id*. at 93-94.

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

[10] *Id*. at 98.

Commission.[11] On September 26, 2002, the petitioner opposed the respondent's motion.[12]

Prior to the filing of its opposition, the petitioner presented evidence in the RTC on September 12, 2002 in the form of the affidavits of its witnesses, namely: Sheila L. Padilla and Nelia C. Laxa, who were both subjected to cross examination.

In her sworn affidavit,[13] Sheila L. Padilla stated thusly:

1. I am presently the Manager of the Surety Service Office of the Capital Insurance and Surety Co., Inc. ("CISCO"). I was a liaison officer of CISCO in 1998;

2. My duties and functions as Manager of the Surety Service Office are to evaluate and verify documents submitted by the principal before the approval and issuing a certain bond. I am also responsible for the liquidation and cancellation of Customs Bonds and its clearances with the different ports;

3. I am familiar with the procedures followed by CISCO in 1997 before they issue and accept surety bonds which include counterbonds for attachment;

4. x x x.

5. If the insured amount exceeds ₱5 Million the approval of the President of CISCO or the Chief Operating Officer is required and either one of them signs the bond. The amount of the deposit or the value of the mortgaged property should be equal to or in excess of the amount of the coverage. After submission of the documents and payment of the premium the surety bond is issued to the insured. The duplicate originals of the bond and the Indemnity Agreement are transmitted to the main office. The collaterals and the other documents are kept in Service Office which issued the bond. The main office includes the surety bond issued in the quarterly report to the main Insurance Commission;

6. I know a certain Mr. Pio Ancheta and Mr. Carlito D. Alub who were the Vice-President for Surety and Asst. Branch Manager

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[11] *Id.* at 35.

[12] *Id.* at 14.

[13] *Id.* at 119-121.

of the Manila Service Office of CISCO, respectively, in 1997. They are no longer connected with CISCO since 1998;

7. I first learned of the purported issuance of CISCO BOND NO. JCL(3)00005 issued on July 10, 1997 from our Manila Service Office sometime in July of 2002 when I was tasked by our counsel, Atty. Rodolfo Gascon, to verify the same from the records of CISCO;

8. At that time the Manila Service Office of CISCO was already closed so I searched for the purported CISCO BOND NO. JCL(3)00005 in our warehouse but despite diligent efforts could not locate the same;

9. There is no proof from CISCO's records that CISCO BOND NO. JCL(3)00005 was ever issued or transmitted to the main office for filing. There is no proof in our records that the premium has been paid or that the counter-security which CISCO normally requires has been issued by insured;

10. I also know that the authority of Mr. Ancheta and Mr. Carlito D. Alub to issue surety like the CISCO BOND NO. JCL(3)00005 is restricted to only ₱5 Million. Any amount beyond that should have the approval of the President, Mr. Aurelio M. Beltran;

11. The amount of the coverage of the purported CISCO BOND NO. JCL(3)00005 is beyond the *maximum retention capacity* of CISCO which is ₱10,715,380.54 as indicated in the letter of the Insurance Commissioner dated August 5, 1996 (which appears in p. 320 of the Court Records);

12. CISCO's records also show that as early as 1998, an audit was conducted of the accountable forms in the Manila Service Office before it was closed in 1998. An audit was conducted where it was discovered that CISCO BOND NO. JCL(3)00005 was missing and unaccounted.

Similarly, Nelia C. Lax, declared in an affidavit[14] the following:

1. I was a member of the Audit Department of Capital Insurance and Surety Co., Inc. ("CISCO");

2. In 1998 before the Manila Service Office of CISCO was closed, I was tasked to audit the records and accountable forms of the said

[14] *Id*. at 106-107.

office, including the forms for JCL(3) which are the counterbonds for attachments;

3. I and Mr. Joel S. Chua made a count of all the accountable forms of the said office, including the JCL(3) forms approved by the Insurance Commissioner and we discovered the CISCO BOND NO. JCL(3)00005 was missing and unaccounted for;

4. Mr. Chua and I prepared a report of our audit findings indicating therein the missing CISCO BOND NO. JCL(3)00005. A copy of the audit report is attached hereto as **Annex "A"** and the pertinent portion thereof as **Annex "A-1"**;

5. Upon being presented, a photocopy of the missing CISCO BOND JCL(3)00005, I noticed that the signature appearing thereon above my name as witness is not my signature.

On October 2, 2002, the petitioner, through its *Very Urgent Motion to Stay Auction Sale of Levied Personal Properties,* sought the stay of the auction sale until the RTC resolved the issue of validity or enforceability of CISCO BOND No. JCL(3)00005.[15]

On December 18, 2002, the RTC issued its assailed resolution,[16] *viz.*:

The Motion dated September 11, 2002 of plaintiff is hereby GRANTED. As prayed for, the Manager or any authorized officer of the following banks are ordered to release the funds under the account of Capital Insurance and Surety Co., Inc., subject of Notice of Garnishment of Deputy Sheriff Manuel S. Paguyo, to wit:

a) Asia United Bank, Pasig City
b) Banco de Oro, Head Office, Pasig City
c) Philippine National Bank, Banawe, Quezon City
d) East-West Bank, Makati City
e) United Coconut Planters Bank, Makati City
f) Manila Bank, Ayala Avenue, Makati City
g) International Exchange Bank, Makati City

Furthermore, the Commissioner of the Office of the Insurance commissioner is hereby ordered to comply with its obligations under

[15] *Id.* at 128-129.
[16] *Id.* at 131-145.

the Insurance Code by upholding the integrity and efficacy of bonds validly issued by duly accredited Bonding and Insurance Companies; and to safeguard the public interest by insuring the faithful performance to enforce contractual obligations under existing bonds. Accordingly said office is ordered to withdraw from security deposit of Capital Insurance & Surety Company, Inc. the amount of ₱11,835,375.50 to be paid to Sheriff Manuel S. Paguyo in satisfaction of the Notice of Garnishment served on August 16, 2002.[17]

On December 27, 2002, the sheriff served a copy of the assailed resolution on the then Insurance Commissioner Edgardo T. Malinis, with the request for him to release the security deposit. However, Insurance Commissioner Malinis turned down the request to release, citing Section 203 of the *Insurance Code,* which expressly provided that the security deposit was exempt from execution.[18]

On January 8, 2003, the respondent moved to cite Insurance Commissioner Malinis in contempt of court for refusing to comply with the RTC's resolution.[19]

On January 16, 2003, the RTC, finding no lawful justification for the Insurance Commissioner's refusal to comply with the order of the RTC, declared him guilty of indirect contempt of court.[20]

Meanwhile, on January 21, 2003, the petitioner filed a *Motion for Reconsideration*[21] against the December 18, 2002 resolution, but the RTC denied the motion on January 30, 2003.[22]

Thus, the petitioner assailed the resolution of December 18, 2002 and the order of January 30, 2003 by petition for *certiorari* in the CA.[23]

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[17] *Id*. at 144-145.
[18] *Id*. at 148-149.
[19] *Id*. at 150-154.
[20] *Id*. at 156-157.
[21] *Id*. at 158-163.
[22] *Id*. at 164-165.
[23] *Id*. at 166-183.

Decision of the CA

On September 15, 2003, the CA dismissed the petitioner's petition for *certiorari*, explaining:

> Per records of the Office of the Insurance Commission, petitioner CISCO is a duly accredited insurance and bonding company. Hence, a counterbond issued by it constitutes a valid and binding contract between petitioner CISCO and the court. As such, the counterbond it issued x x x is valid. No evidence was presented by petitioner CISCO to dispute its validity. Its contention that Pio Ancheta and Carlito Alub, petitioner CISCO's Vice President for Surety and Asst. Branch Manager, respectively, of the Manila Service Office were not authorized to sign the counterbond does not hold water. x x x.
>
> Further, petitioner CISCO avers that the subject CISCO Bond No. 00005/JCL(3), is among those missing from its custody. Granting without admitting that this is true, it is incumbent upon petitioner CISCO to inform the court of such loss. Sad to say, petitioner CISCO failed to do so. x x x.
>
> x x x x x x x x x
>
> If indeed, CISCO Bond No. JCL (3)00005 was lost, petitioner CISCO should have inform (sic) the court of such loss. It is incumbent upon petitioner CISCO to protect and safeguard the bonds it issues. Needless to say, this Court finds the petitioner CISCO's act as a thinly veiled attempt to renege on its obligation under the insurance contract it issued.[24]

The CA opined that the security deposit could answer for the depositor's liability, and be the subject of levy in accordance with Section 203 of the *Insurance Code, viz.*:

> Section 203 of the Insurance Code is clear and unequivocal that the security deposit will be held by the Insurance Commissioner for the faithful performance by the depositing insurer of all its obligations under its insurance contracts. As aptly pointed out by the lower court, Section 203 does not provide for an absolute immunity of the security deposit from liability. The security deposit under this section is not designed to shield the insurance companies from valid and legitimate claims under its contract, for to do so would render bonds futile and useless.

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[24] *Supra* note 1, at 36-39.

Section 192 of the same Code will not apply as an exception to Section 203 because the former speaks of a situation where the Insurance Commissioner shall hold the security deposit for the benefit of the policy holders and from time to time with his assent allow the company "to withdraw any of such securities" as long as the company is solvent. It contemplates of a situation where the security deposit may be returned only if the company ceased to do business. It does not in any manner exempt the security deposit from the insurance company's obligations under its contracts. x x x.[25]

Issues

Hence, this appeal, with the petitioner raising the following as issues:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE COUNTERBOND FILED IN THE TRIAL COURT WAS A VALID AND SUBSISTING OBLIGATION OF THE PETITIONER

II

THE COURT OF APPEALS ERRED IN RULING THAT THE SECURITIES DEPOSITED BY THE PETITIONER INSURANCE COMPANY MAY BE THE SUBJECT OF LEVY IN CONTRAVENTION OF SECTION 203 OF THE INSURANCE CODE[26]

Ruling of the Court

The appeal is meritorious.

I.

Validity of the petitioner's counterbond

Essentially, the petitioner, through the officers of its Audit Department and its Manila Surety Service Office, disputed the validity of CISCO Bond No. 00005/JCL(3) on several grounds, namely: (1) under the petitioner's rules, any coverage exceeding ₱5,000,000.00 required the approval of its President and Chief Operating Officer. Given that the amount involved was

[25] *Id.* at 39-40.
[26] *Id.* at 18-19.

₱10,715,380.54, but the counterbond was signed only by Pio C. Ancheta, the Vice President for Surety, and Carlito D. Alub, the Assistant Branch Manager of the Manila Surety Service Office, whose authority to issue surety bonds was restricted to only ₱5,000,000.00; hence, the counterbond was invalid for being issued without proper authority; (2) an audit of the records and accountable forms of the petitioner revealed that the counterbond was among the missing and unaccounted for; (3) a photocopy of the missing counterbond showed that Nelia Laxa's signature appearing above her name as witness was a forgery; and (4) no evidence was presented to prove that the premiums for the counterbond were paid.

The petitioner cannot evade liability under the counterbond by hiding behind its own internal rules. Although a prospective applicant seeking insurance coverage is expected to exercise prudence and diligence in selecting the insurance provider, such responsibility does not require the prospective applicant to know and be aware of the insurer's internal rules, policies and procedure adopted for the conduct of its business. Considering that the petitioner has been a duly accredited bonding company, the officers who signed the bonds were presumed to be acting within the scope of their authority in behalf of the company, and the courts were not expected to verify the limits of the authority of the signatories of the bonds submitted in the regular course of judicial business, in the same manner that the applicants for the bonds were not expected to know the limits of the authority of the signatories. To insist otherwise is absurd. It is reasonable to hold here, therefore, that as between the petitioner and the respondent, the one who employed and gave character to the third person as its agent should be the one to bear the loss. That party was the petitioner.

Likewise, the petitioner's argument that the counterbond was invalid because the counterbond was unaccounted for and missing from its custody was implausible. The argument totally overlooks a simple tenet that honesty, good faith, and fair dealing required it as the insurer to communicate such an important fact to the assured, or at least keep the latter updated on the relevant

facts. A contrary view would place every person seeking insurance at the insurer's mercy because the latter would simply claim so just to escape liability, thus causing uncertainty to the public and defeating the very purpose for which the insurance was contracted.

The petitioner's contention that there was no evidence to show that the premiums for the counterbond were paid has no merit. To start with, the petitioner did not present any evidence to back up the contention. The bare allegation of non-payment had no weight, for mere allegation, unsubstantiated by evidence, did not equate to proof.[27] In any event, both the RTC and the CA found that the counterbond was approved and signed by both Ancheta and Alub, whose signatures were genuine. If the premiums were not paid, such officers of the petitioner would not have approved the counterbond in the first place.

An insurer or bonding company like the petitioner that seeks to defeat a claim on the ground that the counterbond was invalidly issued has the burden of proving such defense. However, the petitioner did not discharge the burden herein. No less than the officers charged with the responsibility of making sure that all forms and records of the petitioner were audited admitted that the missing counterbond was in fact a valid pre-approved form of the Insurance Commission, so that the absence or lack of the signature of the president did not render the bond invalid. Moreover, Laxa knew that as a matter of long practice both Ancheta and Alub normally signed and approved the counterbonds, regardless of the amounts thereof. She further knew of no rule that limited the authority of Ancheta and Alub to issue and sign counterbonds only up to ₱5,000,000.00.

In this regard, the CA correctly sustained the following findings of the RTC on the matter,[28] to wit:

On this score, this Court quotes with approval the lower court's resolution, to wit:

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[27] *Real v. Belo*, G.R. No. 146224, January 26, 2007, 513 SCRA 111, 125.

[28] *Rollo*, pp. 37-38.

> Ms. Nelia Laxa's affidavit, in substance, declares that she was a member of the Audit Department of CISCO; that in 1998, before the Manila Service Office of CISCO was closed, she was tasked to audit the records and accountable forms including the forms for JCL (3) which are the counterbond for attachment; that she and Mr. Chua discovered that CISCO Bond No. JCL (3)00005 was missing and unaccounted for; that she prepared an audit report indicating the missing CISCO Bond No. JCL(3)00005.
>
> On cross examination, Ms. Laxa admitted that as an employee of the Manila Service Office of CISCO in 1997 she was not aware of the Office policy of CISCO that Mr. Ancheta and Mr. Alub were not authorized to sign counterbonds issued over ₱5M and that she knew as a clerk in 1997, it was Mr. Ancheta and Mr. Alub who approve counterbonds regardless of the amount (TSN, Sept. 17, 2002, pp. 43-44); that she admitted that the missing JCL (3) forms were formerly on file with the Manila Service Office of CISCO in 1997 and were missing in July 2002. (TSN, Sept. 17, 2002, pp. 45-46); that when asked by the Court after being shown of CISCO Bond No. JCL (3) 00005, she admitted that it was a valid pre-approved form by the insurance commission and that the signatures of Mr. Ancheta and Mr. Alub on CISCO Bond No. JCL (3)00005 are their signatures based on her familiarity with the signatures of both persons. (TSN, Sept. 17, 2002, pp. 50-53)

Likewise, Ms. Ester Abrogado, Chief Insurance Specialist of the Rating Division of the OIC testified that she is familiar with the security deposit of insurance companies which are required to have a minimum paid up capital stock of ₱15M, 25% of which is deposited with the OIC in the form of security deposit. x x x. This testimony was corroborated by Sigfredo Aclaracion, Supervising Insurance Specialist, Regulation Division of the OIC who further stated that they have no way of finding out whether a particular bond issued by a bonding company is valid or spurious; and that there is no legal opinion from the Department of Justice, the Office of the Corporate General Counsel or the legal Department OIC on the matter of the liability of security deposit to answer for a judgment which become final and executor.

We emphasize that we have no reason to disturb the factual findings of the RTC, as affirmed by the CA, in the absence of any clear showing by the petitioner of any abuse, arbitrariness

or capriciousness committed by the trial court; hence, the findings of facts of the RTC, especially after being affirmed by the CA as the appellate court, are binding and conclusive upon this Court.[29]

II.

The security deposit was immune from levy or execution

Anent the security deposit, Section 203 of the *Insurance Code* provides as follows:

> Every domestic insurance company shall, to the extent of an amount equal in value to twenty-five *per centum* of the minimum paid-up capital required under section one hundred eighty-eight, invest its funds only in securities, satisfactory to the Commissioner, consisting of bonds or other evidences of debt of the Government of the Philippines or its political subdivisions or instrumentalities, or of government-owned or controlled corporations and entities, including the Central Bank of the Philippines: *Provided*, That such investments shall at all times be maintained free from any lien or encumbrance; and *Provided, further,* That such securities shall be deposited with and held by the Commissioner for the faithful performance by the depositing insurer of all its obligations under its insurance contracts. The provisions of section one hundred ninety-two shall, as far as practicable, apply to the securities deposited under this section.
>
> Except as otherwise provided in this Code, **no judgment creditor or other claimant shall have the right to levy upon any securities of the insurer held on deposit under this section or held on deposit pursuant to the requirement of the Commissioner.**

The forthright text of provision indicates that the security deposit is exempt from levy by a judgment creditor or any other claimant. This exemption has been recognized in several rulings, particularly in *Republic v. Del Monte Motors, Inc.,*[30] the prequel case for this ruling, where the Court has ruled:

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[29] *Plameras v. People of the Philippines*, G.R. No. 187268, September 4, 2013, 705 SCRA 104, 122.

[30] G.R. No. 156956, October 9, 2006, 504 SCRA 53, 60-61.

x x x As worded, the law expressly and clearly states that the security deposit shall be (1) answerable for ***all*** the obligations of the depositing insurer under its insurance contracts; (2) *at all times* free from any liens or encumbrance; and (3) exempt from levy by any claimant.

To be sure, CISCO, though presently under conservatorship, has valid outstanding policies. Its policy holders have a right under the law to be equally protected by its security deposit. To allow the garnishment of that deposit would impair the fund by decreasing it to less than the percentage of paid-up capital that the law requires to be maintained. Further, this move would create, in favor of respondent, a preference of credit over the other policy holders and beneficiaries.

Our Insurance Code is patterned after that of California. Thus, the ruling of the state's Supreme Court on a similar concept as that of the security deposit is instructive. *Engwicht v. Pacific States Life Assurance Co*. held that the money required to be deposited by a mutual assessment insurance company with the state treasurer was "a trust fund to be ratably distributed amongst all the claimants entitled to share in it. Such a distribution cannot be had except in an action in the nature of a creditors' bill, upon the hearing of which, and with all the parties interested in the fund before it, the court may make equitable distribution of the fund, and appoint a receiver to carry that distribution into effect." (Emphasis supplied)

Republic v. Del Monte Motors, Inc.[31] also spelled out the purpose for the enactment of Section 203 of the *Insurance Code*, to wit:

Basic is the statutory construction rule that provisions of a statute should be construed in accordance with the purpose for which it was enacted. **That is, the securities are held as a contingency fund to answer for the claims against the insurance company by *all* its policy holders and their beneficiaries. This step is taken in the event that the company becomes insolvent or otherwise unable to satisfy the claims against it. Thus, a single claimant may not lay stake on the securities to the exclusion of all others. The other parties may have their own claims against the insurance company under other insurance contracts it has entered into.** (bold emphasis ours)

[31] *Id*. at 61-62.

The simplistic interpretation of Section 203 of the *Insurance Code* by the CA ostensibly ran counter to the intention of the statute and the Court's pronouncement on the matter. We cannot uphold the CA's interpretation, therefore, because the holders or beneficiaries of the policies of an insolvent company would thereby likely end up becoming unpaid claimants. Besides, denying the exemption would potentially pave the way for a single claimant, like the respondent, to short-circuit the procedure normally undertaken in adjudicating the claims against an insolvent company under the rules on concurrence and preference of credits in order to ensure that none could obtain an advantage or preference over another by virtue of an attachment or execution. To allow the respondent to proceed independently against the security deposit of the petitioner would not only prejudice the policy holders and their beneficiaries, but would also annul the very reason for which the law required the security deposit.

What right, if any, did the respondent have in the petitioner's security deposit?

According to *Republic v. Del Monte Motors, Inc.*,[32] the right to claim against the security deposit is dependent on the solvency of the insurance company, and is subject to all other obligations of the insurance company arising from its insurance contracts. Accordingly, the respondent's interest in the security deposit could only be inchoate or a mere expectancy, and thus had no attribute as property.

Was the Insurance Commissioner's refusal to release the security deposit despite the garnishment on execution legally justified?

The Insurance Commissioner's refusal to release was legally justified. Under Section 191 and Section 203 of the *Insurance Code,* the Insurance Commissioner had the specific legal duty to hold the security deposits for the benefit of all policy holders. In this regard, *Republic v. Del Monte Motors, Inc.*[33] has also been clear, *viz.*:

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[32] *Id.* at 60-61.

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

The Insurance Code has vested the Office of the Insurance Commission with both *regulatory* and *adjudicatory* authority over insurance matters.

The general regulatory authority of the insurance commissioner is described in Section 414 of the Code as follows:

> "Sec. 414. The Insurance Commissioner shall have the duty to see that all laws relating to insurance, insurance companies and other insurance matters, mutual benefit associations, and trusts for charitable uses are faithfully executed *and to perform the duties imposed upon him by this Code*, and shall, notwithstanding any existing laws to the contrary, have sole and exclusive authority to regulate the issuance and sale of variable contracts as defined in section two hundred thirty-two and to provide for the licensing of persons selling such contracts, and to issue such reasonable rules and regulations governing the same.
>
> *"The Commissioner may issue such rulings, instructions, circulars, orders and decisions as he may deem necessary to secure the enforcement of the provisions of this Code,* subject to the approval of the Secretary of Finance. Except as otherwise specified, decisions made by the Commissioner shall be appealable to the Secretary of Finance." (Emphasis supplied)

x x x x x x x x x

Included in the above regulatory responsibilities is the duty to hold the security deposits under Sections 191 and 203 of the Code, for the benefit and security of all policy holders. In relation to these provisions, Section 192 of the Insurance Code states:

> "Sec. 192. The Commissioner shall hold the securities, deposited as aforesaid, for the benefit and security of all the policyholders of the company depositing the same, but shall as long as the company is solvent, permit the company to collect the interest or dividends on the securities so deposited, and, from time to time, *with his assent, to withdraw any of such securities,* upon depositing with said Commissioner other like securities, the market value of which shall be equal to the market value of such as may be withdrawn. In the event of any company ceasing to do business in the Philippines *the securities deposited*

as aforesaid shall be returned upon the company's making application therefor and proving to the satisfaction of the Commissioner that it has no further liability under any of its policies in the Philippines." (Emphasis supplied)

Undeniably, the insurance commissioner has been given a wide latitude of discretion to regulate the insurance industry so as to protect the insuring public. **The law specifically confers custody over the securities upon the commissioner, with whom these investments are required to be deposited. An implied trust is created by the law for the benefit of all claimants under subsisting insurance contracts issued by the insurance company.**

As the officer vested with custody of the security deposit, the insurance commissioner is in the best position to determine if and when it may be released without prejudicing the rights of other policy holders. Before allowing the withdrawal or the release of the deposit, the commissioner must be satisfied that the conditions contemplated by the law are met and all policy holders protected. (bold emphasis supplied)

Under the circumstances, the Insurance Commissioner properly refused the request to release issued by the sheriff under the notice of garnishment, and was not guilty of contempt of court for disobedience to the assailed order of December 18, 2002 of the RTC.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; **REVERSES** the decision of the Court of Appeals in so far as it allowed the withdrawal of ₱11,835,375.50 from petitioner Capital Insurance & Surety Company's security deposit in the Insurance Commission to comply with the notice of garnishment served on August 16, 2002; **AFFIRMS** the decision promulgated on September 15, 2003 in all other respects; and **MAKES NO PRONOUNCEMENT** on costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 160399. December 9, 2015]

THE CITY OF ILOILO, represented by HON. MAYOR JERRY P. TREÑAS, *petitioner, vs.* **HON. JUDGE RENE B. HONRADO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 29, ILOILO CITY, and JPV MOTOR VEHICLE EMISSION TESTING & CAR CARE CENTER, CO., REPRESENTED BY JIM P. VELEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NATURE AND ROLE; GUIDELINES FOR ISSUANCE OF A VALID WRIT OF PRELIMINARY INJUNCTION.— A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits. Another essential role is preventive of the threats to cause irreparable harm or injury to a party before the litigation could be resolved. x x x Reflecting the avowed roles of the remedy, Section 3, Rule 58 of the *Rules of Court* set the guidelines [for] when the issuance of a writ of preliminary injunction is justified, namely: (a) when the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or (b) when the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) when a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation

of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

2. ID.; ID.; ID.; GRANTING AN INJUNCTION AT THE INITIAL STAGE OF THE CASE AMOUNTED TO THE PREJUDGMENT OF THE MERITS OF THE CASE; IT WAS A BLATANT VIOLATION OF THE RIGHTS OF THE PARTIES TO BE HEARD; *CERTIORARI* LIES AGAINST SUCH ORDERS OF THE REGIONAL TRIAL COURT WHICH WERE TAINTED WITH GRAVE ABUSE OF DISCRETION.— If it was plain from the pleadings that the main relief being sought in Civil Case No. 03-27648 was to enjoin the petitioner from exercising its legal power as a local government unit to consider and pass upon applications for business permits for the operation of businesses like the PETC, and to issue business permits within its territory, we find it appalling how the RTC casually contravened the foregoing guidelines and easily ignored the exhortation by granting JPV's application for injunction on June 24, 2003 in the initial stage of the case. Such granting of JPV's application already amounted to the virtual acceptance of JPV's alleged entitlement to preventing the petitioner from considering and passing upon the applications of other parties like Grahar to operate their own PETC in Iloilo City based on JPV's still controversial capability to serve all the registered motor vehicles in Iloilo City pursuant to Department Order No. 2002-31. The granting amounted to the prejudgment of the merits of the case, something the RTC could not validly do. It apparently forgot that the function of the writ of preliminary injunction was not to determine the merits of the case, or to decide controverted facts, because an interlocutory injunction was but a *preliminary* and *preparatory* order that still looked to a future final hearing, and, although contemplating what the result of that hearing would be, it should not settle what the result should be. Thus, the RTC did not exercise its broad discretion soundly because it blatantly violated the right to be heard of the petitioner, whose right to substantiate its defense of the power to regulate businesses within its territorial jurisdiction should be fully recognized. It also violated the right to be heard of the intervenor Grahar, whose intervention in the suit was granted only on the same date of June 24, 2003. To stress yet again, the main relief could not be resolved without receiving the evidence of all the parties that would settle the contested facts.

Under the circumstances, the challenged orders of the RTC were undeniably tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. *Grave abuse of discretion* means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction. *Certiorari* lies.

APPEARANCES OF COUNSEL

City Legal Office (Iloilo City) for petitioner.
Rex C. Muzones for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

The essential office of preliminary injunction is to preserve the rights of the parties before the final adjudication of the issues. Where injunction is the main relief sought in the action, therefore, the trial court should desist from granting the plaintiff's application for temporary restraining order or writ of preliminary injunction if such grant would tend to prejudge the case on the merits. The preliminary injunction should not determine the merits of the case, or decide controverted facts, but should still look to a future final hearing.

The Case

This case is a direct resort to the Court by way of *certiorari* to challenge the orders issued on June 24, 2003[1] and August 15, 2003[2] in Civil Case No. 03-27648 by the Regional Trial Court (RTC), Branch 29, in Iloilo City on the ground that the

[1] *Rollo*, pp. 29-30.

[2] *Id*. at 31.

RTC thereby committed grave abuse of its discretion amounting to lack or excess of jurisdiction.

Antecedents

The Department of Transportation and Communications (DOTC) issued Department Order No. 2002-31 (with the subject "AUTHORIZATION OF PRIVATE EMISSION TESTING CENTERS").[3] Item No. 2 of Department Order No. 2002-31 stated:

> 2. To ensure that "cut throat" or "ruinous" competition, that may result to the degradation of level of service of the project is avoided, authorization of PETC should strictly be rationalized taking into consideration the vehicle population expected to be serviced in the area. As basis, one (1) PETC lane shall be authorized for every 15,000 registered vehicles in an LTO Registering District.

JPV Motor Vehicle Emission Testing and Car Care Center (JPV), a partnership authorized to operate a PETC in Iloilo City, was granted a capacity of four lanes that could cater to 15,000 motor vehicles per lane for the total capacity of 60,000 motor vehicles. At the time JPV filed the complaint in Civil Case No. 03-27648 to prevent the petitioner from acting on the pending application for the operation of another Private Emission Testing Center (PETC) in Iloilo City, there were 53,647 registered motor vehicles in Iloilo City. Accordingly, JPV averred in its complaint that there was no need for another PETC because it already had the capability to serve all the registered motor vehicles in Iloilo City pursuant to Department Order No. 2002-31.[4]

Through its answer, the petitioner contested the injunctive relief being sought by JPV, insisting that such relief, if issued, would result into a monopoly on the part of JPV in the operation of a PETC; that the writ of injunction would prevent the exercise by the City Mayor of his discretionary power to issue or not to issue business permits; and that JPV did not establish

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[3] *Id*. at 36-37.

[4] *Id*. at 32-35.

the existence of its right *in esse* to be protected by the writ of injunction.[5]

On June 18, 2003, Grahar Emission Testing Center (Grahar), another PETC operator with a pending application for a business/mayor's permit to operate its own PETC in Iloilo City, sought leave of court to intervene in Civil Case No. 03-27648.[6]

Although it allowed the intervention of Grahar on June 24, 2003, the RTC nonetheless issued the first assailed order granting the application of JPV for the writ of preliminary injunction,[7] also on June 24, 2003, disposing as follows:

> WHEREFORE, let the Writ of Preliminary Prohibitory Injunction issue. The defendant City of Iloilo, his agents, representatives or anyone acting for and in his behalf is ordered to refrain and desist from the issuance of a Mayor's Permit to operate a PETC in the City of Iloilo.
>
> It is understood that the herein injunction shall be dissolved the moment the DOTC authorizes the operations of another or additional PETC in the City of Iloilo.
>
> The plaintiff is directed to post an Injunction Bond in the amount of Php 100,000.00 executed in favor of the defendant to the effect that Plaintiff will pay the defendant all damages which it may sustain by reason of the injunction should the court finally decide that plaintiff is not entitled thereto.
>
> SO ORDERED.

The petitioner moved for the reconsideration of the first assailed order of June 24, 2003 and prayed for the dissolution of the writ of preliminary injunction.[8] On August 15, 2003, however, the RTC issued the second assailed order denying the petitioner's *Motion for Reconsideration*,[9] to wit:

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

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

[7] *Supra* note 1, at 30.

[8] *Rollo*, pp. 62-69.

[9] *Supra* note 2.

This resolves the motion for reconsideration of the Order dated June 24, 2003.

It must be noted that the writ of injunction was issued to give effect to the Department Order No. 2002-31 dated August 20, 2002 of the DOTC to prevent the degradation of the level of service of the smoke emission test. The amendment of certain section of the said department order, thereby reducing the vehicle requirements from 15,000 to 12,000 vehicles per one (1) PETC lane does not in anyway require for an additional PETC to operate since the LTO is also operating two-lanes testing facilities which can serve 24,000 vehicles plus the four-lanes testing facilities currently operated by the herein plaintiff can accommodate 72,000 vehicles which is more than enough to serve the 53,647 registered vehicles in the City of Iloilo. To allow additional PETC will surely result to an unhealthy competition which will run counter to the purpose of the DOTC Department Order No. 2002-31, i.e.*, to ensure that "cut throat" or "ruinous" competition that may result to the degradation of level of service of the project is avoided, authorization of PETC should strictly be rationalized taking into consideration the vehicle population expected to be serviced in the area.*

WHEREFORE, the motion for reconsideration is hereby denied. The Order dated June 24, 2003 stands.

SO ORDERED.

It is relevant to note that Grahar filed its own *Urgent Motion for Reconsideration on the Issuance of a Writ of Preliminary Prohibitory Injunction in Favor of the Plaintiff*,[10] whereby it brought to the attention of the RTC the fact that the DOTC had meanwhile issued on April 10, 2003 Department Order No. 2003-24 (with the subject "AN ORDER AMENDING CERTAIN SECTIONS OF DEPARTMENT ORDER NO. 2002-31") in order to reduce the required vehicle capacity per lane of PETCs from 15,000 vehicles to 12,000 vehicles. Grahar contended that JPV's capacity and capability were no longer sufficient to serve the emission testing requirements of the entire motor vehicle population of Iloilo City.

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[10] Records, pp. 112-113.

Issue

Hence, on November 5, 2003,[11] the petitioner has come directly to the Court on *certiorari* to challenge the foregoing orders, specifically asserting:

A. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED JUNE 24, 2003 ORDERING PETITION[ER] CITY MAYOR OF ILOILO (*sic*), HIS AGENTS REPRESENTATIVES OR ANYONE ACTING FOR AND IN HIS BEHALF TO REFRAIN AND DESIST FROM THE ISSUANCE OF A MAYOR'S PERMIT TO OPERATE A PRIVATE EMISSION TESTING CENTER IN THE CITY OF ILOILO, WHICH IN EFFECT PREVENTED THE EXERCISE BY PETITIONER CITY MAYOR (*sic*) OF A DISCRETIONARY POWER GRANTED BY LAW, ABSENT ANY SHOWING OF ABUSE IN THE EXERCISE THEREOF.

B. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS ORDER NO. 2002-31 PROVIDES A BASIS FOR THE ISSUANCE OF A WRIT OF PRELIMINARY PROHIBITORTY INJUNCTION IN FAVOR OF RESPONDENT AND AS AGAINST PETITIONER CITY MAYOR (*sic*).

C. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AS CONTAINED IN ITS ORDER OF AUGUST 15, 2003.

In its comment,[12] JPV counters that the petitioner made no showing of grave abuse of discretion by the RTC because it had established its capability to serve the entire needs of Iloilo City for the PETC.

In its reply,[13] the petitioner adverts to Department Order No. 2003-51, another DOTC order issued on October 13, 2003 (with

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[11] *Rollo*, pp. 14-15.

[12] *Id*. at 74-79.

[13] *Id*. at 106.

the subject "AN ORDER NULLIFYING SECTIONS 2 AND 3 OF DEPARTMENT ORDER NO. 2002-31"), and submits:

> In deference to the opinion of the Office of the Solicitor General dated 10 July 2003 which as quoted verbatim "policy considerations dictate that open competition will better serve public needs because it will result in better service for a lesser price to motor vehicle owners" and further stressed that "Further, the lifting of a quota for each lane will eschew future litigations on the matter", Sections 2 and 3 of Department Order No. 2002-31 are hereby nullified.
>
> All previous and/or issuances that are found inconsistent herewith are hereby amended.[14]

In the cited opinion, the Solicitor General opined and recommended that "the LTO may validly eliminate the basis or quota of vehicles to be serviced by PETC lanes."[15]

Ruling of the Court

The Court grants the petition for *certiorari*.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to protect the ability of the court to render a meaningful decision,[16] or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits.[17] Another essential role is preventive of the threats to cause irreparable harm or injury to a party before the litigation could be resolved. In *Pahila-Garrido v. Tortogo*,[18] we have explained the preservative or

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[14] *Id.* at 109.

[15] *Id.* at 113.

[16] *Meis v. Sanitas Service Corporation*, C. A. Tex., 511 F. 2d 655; *Gobel v. Laing*, 231 N. E., 2d 341, 12 Ohio App. 2d 93.

[17] *United States v. Adler's Creamery*, C. C. A. N. Y., 107 F. 2d 987; *American Mercury v. Kiely*, C. C. A. N. Y., 19 F. 2d 295.

[18] G.R. No. 156358, August 17, 2011, 655 SCRA 553, 575-576.

preventive character of injunction as a remedy in the course of the litigation, *viz.*:

> Generally, injunction, being a preservative remedy for the protection of substantive rights or interests, is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit. It is resorted to only when there is a pressing necessity to avoid injurious consequences that cannot be redressed under any standard of compensation. The controlling reason for the existence of the judicial power to issue the writ of injunction is that the court may thereby prevent a threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated. The application for the writ rests upon an alleged existence of an emergency or of a special reason for such an order to issue before the case can be regularly heard, and the essential conditions for granting such temporary injunctive relief are that the complaint alleges facts that appear to be sufficient to constitute a cause of action for injunction and that on the entire showing from both sides, it appears, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of plaintiff pending the litigation.

Reflecting the avowed roles of the remedy, Section 3, Rule 58 of the *Rules of Court* set the guidelines for when the issuance of a writ of preliminary injunction is justified, namely: (a) when the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or (b) when the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) when a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Did the RTC contravene the foregoing guidelines when it granted JPV's application for the writ of preliminary injunction?

Although the RTC had the broad discretion in dealing with JPV's application for the writ of preliminary injunction, it was bound by the Court's exhortation against thereby prejudging the merits of the case in *Searth Commodities Corp. v. Court of Appeals*:[19]

> The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. (*Rivas v. Securities and Exchange Commission*, 190 SCRA 295 [1990]; *Government Service and Insurance System v. Florendo*, 178 SCRA 76 [1989]; and *Ortigas v. Co. Ltd. Partnership v. Court of Appeals*, 162 SCRA 165 [1988]) In the case at bar, if the lower court issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, the issuance of the writ would be a virtual acceptance of their claim that the foreclosure sale is null and void. (See *Ortigas and Co., Ltd. Partnership v. Court of Appeals, supra*). **There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove**. (Id.) (bold emphasis supplied)

If it was plain from the pleadings that the main relief being sought in Civil Case No. 03-27648 was to enjoin the petitioner from exercising its legal power as a local government unit to consider and pass upon applications for business permits for the operation of businesses like the PETC, and to issue business permits within its territory, we find it appalling how the RTC casually contravened the foregoing guidelines and easily ignored the exhortation by granting JPV's application for injunction on June 24, 2003 in the initial stage of the case. Such granting of JPV's application already amounted to the virtual acceptance of JPV's alleged entitlement to preventing the petitioner from considering and passing upon the applications of other parties like Grahar to operate their own PETC in Iloilo City based on JPV's still controversial capability to serve all the registered motor vehicles in Iloilo City pursuant to Department Order No. 2002-31. The granting

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[19] G.R. No. 64220, March 31, 1992, 207 SCRA 622, 629-630.

amounted to the prejudgment of the merits of the case, something the RTC could not validly do. It apparently forgot that the function of the writ of preliminary injunction was not to determine the merits of the case,[20] or to decide controverted facts,[21] because an interlocutory injunction was but a *preliminary* and *preparatory* order that still looked to a future final hearing, and, although contemplating what the result of that hearing would be, it should not settle what the result should be.[22]

Thus, the RTC did not exercise its broad discretion soundly because it blatantly violated the right to be heard of the petitioner, whose right to substantiate its defense of the power to regulate businesses within its territorial jurisdiction should be fully recognized. It also violated the right to be heard of the intervenor Grahar, whose intervention in the suit was granted only on the same date of June 24, 2003. To stress yet again, the main relief could not be resolved without receiving the evidence of all the parties that would settle the contested facts.

Under the circumstances, the challenged orders of the RTC were undeniably tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. *Grave abuse of discretion* means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[23] To

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[20] *B. W. Photo Utilities v. Republic Molding Corporation*, C. A. Cal., 280 F. 2d 806; *Duckworth v. James*, C. A. Va. 267 F. 2d 224; *Westinghouse Electric Corporation v. Free Sewing Machine Co*., C. A. Ill, 256 F. 2d 806.

[21] *Lonergan v. Crucible Steel Co. of America*, 229 N. E. 2d 536, 37 Ill. 2d 599; *Compton v. Paul K. Harding Realty Co*., 231 N. E. 2d 267, 87 Ill. App. 2d 219.

[22] *Milton Frank Allen Publications, Inc. v. Geogia Association of Petroleum Retailers, Inc*., 158 S. E. 2d 248, 223 Ga. 784; *Parker v. West View Cemetery Association*, 24 S. E. 2d 29, 195 Ga. 237.

[23] *Feliciano v. Villasin,* G.R. No. 174929, June 27, 2008, 556 SCRA 348, 363; *Uy v. Office of the Ombudsman,* G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73, 93.

justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[24]

Certiorari lies. According to *Pahila-Garrido v. Tortogo*:[25]

> *Certiorari* is a writ issued by a superior court to an inferior court of record, or other tribunal or officer, exercising a judicial function, requiring the certification and return to the former of some proceeding then pending, or the record and proceedings in some cause already terminated, in cases where the procedure is not according to the course of the common law. The remedy is brought against a lower court, board, or officer rendering a judgment or order and seeks the annulment or modification of the proceedings of such tribunal, board or officer, and the granting of such incidental reliefs as law and justice may require. It is available when the following indispensable elements concur, to wit:
>
> 1. That it is directed against a tribunal, board or officer exercising judicial or *quasi*-judicial functions;
>
> 2. That such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and
>
> 3. That there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.
>
> *Certiorari* being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law. The extraordinary writ of *certiorari* may be availed of only upon a showing, in the minimum, that the respondent tribunal 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.

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[24] *Vergara v. Ombudsman,* G.R. No. 174567, March 12, 2009, 580 SCRA 693, 713; *Nationwide Security and Allied Services, Inc. v. Court of Appeals,* G.R. No. 155844, 14 July 2008, 558 SCRA 148, 153.

[25] *Supra* note 18, at 568-569.

For a petition for *certiorari* and prohibition to prosper and be given due course, it must be shown that: (*a*) the respondent judge or tribunal issued the order *without* or *in excess of* jurisdiction or *with grave abuse of discretion*; or (*b*) the assailed interlocutory order is *patently erroneous*, and the remedy of appeal cannot afford adequate and expeditious relief. Yet, the allegation that the 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 will not alone suffice. Equally imperative is that the petition must satisfactorily specify the acts committed or omitted by the tribunal, board or officer that constitute grave abuse of discretion.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the assailed orders issued on June 24, 2003 and August 15, 2003 in Civil Case No. 03-27648 by the Regional Trial Court, Branch 29, in Iloilo City; **DISSOLVES** the writ of preliminary prohibitory injunction issued pursuant to such orders; **ORDERS** the Regional Trial Court, Branch 29, in Iloilo City to resume its proceedings in Civil Case No. 03-27648 as if said orders had not been issued, if further proceedings are still warranted; and **DIRECTS** respondent **JPV MOTOR VEHICLE EMISSION TESTING & CAR CARE CENTER, CO., REPRESENTED BY JIM P. VELEZ** to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169694. December 9, 2015]

MEGAWORLD PROPERTIES AND HOLDINGS, INC., EMPIRE EAST LAND HOLDINGS, INC., and ANDREW L. TAN, *petitioners, vs.* **MAJESTIC FINANCE AND INVESTMENT CO., INC., RHODORA LOPEZ-LIM and PAULINA CRUZ,** *respondents*.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; DEFINED.—** Reciprocal obligations are those that arise from the same cause, and in which each party is a debtor and a creditor of the other at the same time, such that the obligations of one are dependent upon the obligations of the other. They are to be performed simultaneously, so that the performance by one is conditioned upon the simultaneous fulfillment by the other.

2. **ID.; ID.; ID.; THE TERMS OF THE JOINT VENTURE AGREEMENT (JVA) CATEGORIZED THE PARTIES' SEVERAL OBLIGATIONS INTO CONTINUOUS OBLIGATIONS AND ACTIVITY OBLIGATIONS.—** The determination of default on the part of either of the parties depends on the terms of the JVA that clearly categorized the parties' several obligations into two types. The first type related to the *continuous obligations* that would be continuously performed from the moment of the execution of the JVA until the parties shall have achieved the purpose of their joint venture. The continuous obligations under the JVA were as follows: (1) the developer would secure the joint venture property from unauthorized occupants; (2) the owner would allow the developer to take possession of the joint venture property; (3) the owner would deliver any and all documents necessary for the accomplishment of each activity; and (4) both the developer and the owner would pay the real estate taxes. The second type referred to the *activity obligations*. x x x The activities under the JVA fell into seven major categories, specifically: (1) the

relocation of the occupants; (2) the completion of the development plan; (3) the securing of exemption and conversion permits; (4) the obtention of the development permits from government agencies; (5) the development of the subject land; (6) the issuance of titles for the subdivided lots; and (7) the selling of the subdivided lots and the reimbursement of the advances.

3. ID.; ID.; ID.; ID.; SHOULD ANY OF THE OBLIGATIONS, WHETHER CONTINUOUS OR ACTIVITY, BE NOT PERFORMED, ALL THE OTHER REMAINING OBLIGATIONS WOULD NOT RIPEN INTO DEMANDABLE OBLIGATIONS WHILE THOSE ALREADY PERFORMED WOULD CEASE TO TAKE EFFECT.— In each activity, the obligation of each party was dependent upon the obligation of the other. Although their obligations were to be performed simultaneously, the performance of an activity obligation was still conditioned upon the fulfillment of the continuous obligation, and vice versa. Should either party cease to perform a continuous obligation, the other's subsequent activity obligation would not accrue. Conversely, if an activity obligation was not performed by either party, the continuous obligation of the other would cease to take effect. The performance of the continuous obligation was subject to the resolutory condition that the *precedent* obligation of the other party, whether continuous or activity, was fulfilled as it became due. Otherwise, the continuous obligation would be extinguished. According to Article 1184 of the *Civil Code*, the condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires, or if it has become indubitable that the event will not take place. Here, the common cause of the parties in entering into the joint venture was the development of the joint venture property into the residential subdivision as to eventually profit therefrom. Consequently, all of the obligations under the JVA were subject to the happening of the complete development of the joint venture property, or if it would become indubitable that the completion would not take place, like when an obligation, whether continuous or activity, was not performed. Should any of the obligations, whether continuous or activity, be not performed, all the other *remaining* obligations would not ripen into demandable obligations while those already performed would cease to take effect. This is because every single obligation of each party under the JVA

rested on the common cause of profiting from the developed subdivision.

4. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE TRIAL COURT ACTED WHIMSICALLY IN ORDERING A PARTY TO PERFORM ITS OBLIGATION WITHOUT ASCERTAINING WHETHER OR NOT THE PRECEDENT RECIPROCAL OBLIGATION OF THAT PARTY UPON WHICH THE DEMANDED OBLIGATION OF THE OTHER PARTY WAS DEPENDENT HAD ALREADY BEEN PERFORMED.— [T]he record is bereft of the proof to support the lower courts' unanimous conclusion that the owner had already performed its correlative obligation under the JVA as to place itself in the position to demand that the developer should already perform its obligation of providing the round-the-clock security on the property. In issuing its order of November 5, 2002, therefore, the RTC acted whimsically because it did not first ascertain whether or not the precedent reciprocal obligation of the owner upon which the demanded obligation of the developer was dependent had already been performed. Without such showing that the developer had ceased to perform a continuous obligation to provide security over the joint venture property *despite complete fulfillment by the owner of all its accrued obligations*, the owner had no right to demand from the developer the round-the-clock security over the 215 hectares of land.

5. ID.; ORDERS; *STATUS QUO ANTE* ORDER; THE ISSUANCE OF THE *STATUS QUO ANTE* ORDER CONSTITUTED A BLATANT JURISDICTIONAL ERROR.— The order of November 5, 2002, by directing the developer to provide sufficient round-the-clock security for the protection of the joint venture property during the pendency of the case, was not of the nature of the *status quo ante* order because the developer, as averred in the complaint, had not yet provided a single security watchman to secure the entire 215 hectares of land for several years. Also, the owner stated in the comment to the petition that the developer had dismissed all the security guards posted in the property since 1997. At the time of the filing of the complaint for specific performance on February 29, 2000, therefore, the last actual, peaceable and uncontested state of things preceding the controversy was the absence of such security, not the installation of the security personnel/

measures. In fact, the failure of the developer to provide the round-the-clock security itself became the controversy that impelled the owner to bring the action against the petitioners. By preliminarily directing the developer to provide sufficient round-the-clock security for the protection of the joint venture property during the pendency of the case, the November 5, 2002 order of the RTC did not come under the category of the *status quo ante* order that would issue upon equitable consideration, or even of an injunctive relief that would issue under Rule 58 of the *Rules of Court*. Hence, the issuance of the order constituted a blatant jurisdictional error that needed to be excised. Verily, a jurisdictional error is one by which the act complained of was issued by the court without or in excess of jurisdiction. *Without jurisdiction* means that the court acted with absolute want of jurisdiction. *Excess of jurisdiction* means that the court has jurisdiction but has transcended the same or acted without any statutory authority. Although the RTC undoubtedly had jurisdiction to hear and decide the principal action for specific performance as well as to act on the motions submitted to it in the course of the proceedings, the distinction between jurisdiction over the case and jurisdiction to issue an interlocutory order as an ancillary remedy incident to the principal action should be discerned. We have frequently declared that a court may have jurisdiction over the principal action but may nevertheless act irregularly or in excess of its jurisdiction in the course of its proceedings by the granting of an auxiliary remedy.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Aventino B. Claveria for respondents.

D E C I S I O N

BERSAMIN, *J.*:

This case arises from a dispute on whether either party of a joint venture agreement to develop property into a residential subdivision has already performed its obligation as to entitle it to demand the performance of the other's reciprocal obligation.

The Case

Under review is the decision promulgated on April 27, 2005,[1] whereby the Court of Appeals (CA) upheld the order issued on November 5, 2002 by the Regional Trial Court, Branch 67, in Pasig City (RTC) in Civil Case No. 67813 directing the defendants (petitioners herein) to perform their obligation to provide round-the-clock security for the property under development.[2] Also appealed is the resolution promulgated on September 12, 2005 denying the petitioners' motion for reconsideration.[3]

Antecedents

On September 23, 1994, Megaworld Properties and Holdings, Inc. (developer) entered into a Joint Venture Agreement (JVA)[4] with Majestic Finance and Investment Co., Inc. (owner) for the development of the residential subdivision located in Brgy. Alingaro, General Trias, Cavite. According to the JVA, the development of the 215 hectares of land belonging to the owner (joint venture property) would be for the sole account of the developer;[5] and that upon completion of the development of the subdivision, the owner would compensate the developer in the form of saleable residential subdivision lots.[6] The JVA further provided that the developer would advance all the costs for the relocation and resettlement of the occupants of the joint venture property, subject to reimbursement by the owner;[7] and that the developer would deposit the initial amount of

[1] *Rollo,* pp. 378-393; penned by Associate Justice Arturo D. Brion (now a Member of the Court), with the concurrence of Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Eliezer R. De Los Santos (retired/deceased).

[2] *Id*. at 111.

[3] *Id*. at 413-415.

[4] *Id*. at 113-123.

[5] *Id*. at 117 (Art. III (e), JVA).

[6] *Id*. at 118 (Art. IV, JVA).

[7] *Id*. at 116 (Art. III(a) par. 1, JVA).

₱10,000,000.00 to defray the expenses for the relocation and settlement, and the costs for obtaining from the Government the exemptions and conversion permits, and the required clearances.[8]

On September 24, 1994, the developer and owner agreed, through the addendum to the JVA,[9] to increase the initial deposit for the settlement of claims and the relocation of the tenants from ₱10,000,000.00 to ₱60,000,000.00.

On October 27, 1994, the developer, by deed of assignment,[10] transferred, conveyed and assigned to Empire East Land Holdings, Inc. (developer/assignee) all its rights and obligations under the JVA including the addendum.

On February 29, 2000, the owner filed in the RTC a complaint for specific performance with damages against the developer, the developer/assignee, and respondent Andrew Tan, who are now the petitioners herein. The complaint, docketed as Civil Case No. 67813, was mainly based on the failure of the petitioners to comply with their obligations under the JVA,[11] including the obligation to maintain a strong security force to safeguard the entire joint venture property of 215 hectares from illegal entrants and occupants.

Following the joinder of issues by the petitioners' answer with counterclaim, and by the respondents' reply with answer to the counterclaim, the RTC set the pre-trial of the case. At the conclusion of the pre-trial conference, the presentation of the owner's evidence was suspended because of the parties' manifestation that they would settle the case amicably. It appears that the parties negotiated with each other on how to implement the JVA and the addendum.

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[8] *Id*. (Art. III(a) par. 2, JVA).

[9] *Id*. at 124.

[10] *Id*. at 126-128.

[11] *Id*. at 167-202.

On September 16, 2002, the owner filed in the RTC a manifestation and motion,[12] praying therein that the petitioners be directed to provide round-the-clock security for the joint venture property in order to defend and protect it from the invasion of unauthorized persons. The petitioners opposed the manifestation and motion,[13] pointing out that: (1) the move to have them provide security in the properties was premature; and (2) under the principle of reciprocal obligations, the owner could not compel them to perform their obligations under the JVA if the owner itself refused to honor its obligations under the JVA and the addendum.

On November 5, 2002, the RTC issued its first assailed order,[14] directing the developer to provide sufficient round-the-clock security for the protection of the joint venture property, as follows:

> For consideration is a "Manifestation and Motion" filed by plaintiff, through counsel, defendants having filed their Opposition thereto, the incident is now ripe for resolution.
>
> After a careful examination of the records of this case, the Court believes that the defendants should provide security for the 215 hectares land subject of the joint venture agreement to protect it from unlawful elements as well as to avoid undue damage which may be caused by the settling of squatters. As specified in Article III par. (j) of the joint venture agreement which was entered into by plaintiffs and defendants, the latter shall at its exclusive account and sole expense secure the land in question from the influx of squatters and/or unauthorized settlers, occupants, tillers, cultivators and the likes from date of execution of this agreement.
>
> WHEREFORE, and as prayed for, the Court hereby directs the defendants to provide sufficient round the clock security for the protection of the 215 hectares land subject of the joint venture agreement during the pendency of this case.
>
> SO ORDERED.

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[12] *Id*. at 269-271.

[13] *Id*. at 272-275.

[14] *Id*. at 111.

The petitioners sought the reconsideration of the November 5, 2002 order,[15] but the RTC denied the motion on May 19, 2003,[16] observing that there was no reason to reverse the order in question considering that the allegations in the motion for reconsideration, being a mere rehash of those made earlier, had already been passed upon.

On August 4, 2003, the petitioners instituted a special civil action for *certiorari* in the CA,[17] claiming therein that the RTC thereby gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the order of November 5, 2002, specifying the following grounds, namely:

THE PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DIRECTING PETITIONERS TO PROVIDE ROUND THE CLOCK SECURITY GUARDS ON THE SUBJECT PROPERTIES.

I. THE PUBLIC RESPONDENT ARBITRARILY AND PREMATURELY DISPOSED OF ONE OF THE RELIEF[S] PRAYED FOR BY PRIVATE RESPONDENTS IN THEIR COMPLAINT WHEN TRIAL HAS NOT EVEN STARTED.

II. PUBLIC RESPONDENT ARBITRARILY DISREGARDED THE FACT THAT THE PARTIES ARE DISCUSSING HOW TO PURSUE THE JVA.

III. PUBLIC RESPONDENT ARBITRARILY DISREGARDED THE PRINCIPLE OF "RECIPROCAL OBLIGATIONS" UNDER THE CIVIL CODE.

On April 27, 2005, the CA promulgated its assailed decision dismissing the petitioner's petition for *certiorari*,[18] ruling thusly:

On the merits of the petition, our examination of the records shows nothing whimsical or arbitrary in the respondent judge's order directing the petitioners to provide security over the joint venture property.

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[15] *Id*. at 277-283.

[16] *Id*. at 112.

[17] *Id*. at 74-103.

[18] *Id*. at 378-393.

Like the respondent judge, we believe that the obligation of the petitioners under the JVA to provide security in the area, as spelled out under Article II, par. (c) and Article III, paragraphs (h) and (j), is well established, thus:

xxx xxx xxx

These clear and categorical provisions in the JVA –which petitioners themselves do not question –obviously belie their contention that the respondent judge's order to provide security for the property is premature at this stage. The petitioner's obligation to secure the property under the JVA arose upon the execution of the Agreement, or as soon as the petitioners acquired possession of the joint venture property in 1994, and is therefore already demandable. The settled rule is that "contracts are the laws between the contracting parties, and if their terms are clear and leave no room for doubt as to their intentions, the contracts are obligatory no matter what their forms may be, whenever the essential requisites for their validity are present." Thus, unless the existence of this particular obligation – i.e., to secure the joint venture property – is challenged, petitioners are bound to respect the terms of the Agreement and of his obligation as the law between them and MAJESTIC.

We stress along this line that the complaint MAJESTIC filed below is for specific performance and is not for rescission of contract. The complaint presupposes existing obligations on the part of the petitioners that MAJESTIC seeks to be carried out in accordance with the terms of the Agreement. Significantly, MAJESTIC did not pray in the complaint that petitioners be ordered to secure the area from the influx of illegal settlers and squatters because petitioner's obligation in this regard commenced upon the execution of the JVA and hence, is already an existing obligation. What it did ask is for the petitioners to maintain a strong security force at all times over the area, in keeping with their commitment to secure the area from the influx of illegal settlers and occupant. To be sure, to "maintain" means "to continue", "to carry on", to "hold or keep in any particular state or condition" and presupposes an obligation that already began. Thus, contrary to petitioner's submissions, the question of whether or not they have the obligation to provide security in the area is not at all an issue in the case below. The issue MAJESTIC presented below is whether or not petitioner should be ordered to maintain a strong security force within the joint venture property. Hence, in issuing the assailed orders, the public respondent prejudged no issue

that is yet to be resolved after the parties shall have presented their evidence.

Our conclusion (that the petitioner's obligation to secure and protect the joint venture property is a non-issue in the case below) necessarily explains why the first assailed order –although not in the form of a preliminary mandatory injunction –is nonetheless legally justified. As an established and undisputed interim measure pending the resolution of the case on the merits, we do not see its enforcement as hindrance to whatever negotiations the parties may undertake to settle their dispute.

Nor do we find the principle of reciprocal obligations a justification for petitioner's refusal to perform their commitment of safeguarding the joint venture property. For, while it is true that the JVA gives rise to reciprocal obligations from both parties, these obligations are not necessarily demandable at the same time. MAJESTIC's initial obligation under the JVA is to deliver or surrender to the petitioners the possession of the joint venture property –an obligation it fulfilled upon the execution of the Agreement. MAJESTIC's obligation under the JVA to deliver to the petitioners the titles to the joint venture property and to reimburse them for tenant-related expenses are demandable at later stages of the contract or upon completion of the development, and therefore may not be used by the petitioners as an excuse for not complying with their own currently demandable obligation.

All told, we believe that securing and protecting the area from unlawful elements benefits both the developer and the landowner who are equally keen in safeguarding their interests in the project. Otherwise stated, incursion by unlawful settlers into an unsecured and unprotected joint venture property can only cause great loss and damage to both parties. Reasons of practicality within legal parameters, rather than grave abuse of discretion, therefore underlie the respondent judge's challenged orders.

WHEREFORE, premises considered, we hereby DISMISS the petition for lack of merit.

SO ORDERED.[19] (Emphasis omitted)

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[19] *Id*. at 388-395.

On May 26, 2005, the petitioners filed a motion for reconsideration,[20] but the CA denied the motion on September 12, 2005.[21]

Hence, this appeal by petition for review on *certiorari*.

Issues

The petitioner submits the following issues:

a. Whether or not the petitioners are obligated to perform their obligations under the JVA, including that of providing round-the-clock security for the subject properties, despite respondents' failure or refusal to acknowledge, or perform their reciprocal obligations there;

b. Whether or not the RTC gravely abused its discretion in directing the petitioners to perform their obligations under the JVA, including that of providing round-the-clock security for the subject properties, although the JVA had been suspended due to the parties' disagreement as to how to implement the same;

c. Whether or not the RTC gravely abused its discretion in issuing the first and second assailed orders and prematurely resolving and disposing of one of the causes of action of the respondents, which was to provide round-the-clock security for the subject properties, an issue proposed by the respondents, even before the termination of the pre-trial;

d. Whether or not the RTC gravely abused its discretion in issuing the first and second assailed orders in clear disregard of the mandatory requirements of Rule 58 of the *Rules of Court*.[22]

Ruling of the Court

The appeal is meritorious. The CA erred in upholding the November 5, 2002 order of the RTC.

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[20] *Id*. at 394-411.

[21] *Id*. at 413-415.

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

The obligations of the parties under the JVA were unquestionably reciprocal. Reciprocal obligations are those that arise from the same cause, and in which each party is a debtor and a creditor of the other at the same time, such that the obligations of one are dependent upon the obligations of the other. They are to be performed simultaneously, so that the performance by one is conditioned upon the simultaneous fulfillment by the other.[23] As the Court has expounded in *Consolidated Industrial Gases, Inc. v. Alabang Medical Center*:[24]

> Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.
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> x x x x x x x x x
>
> In reciprocal obligations, before a party can demand the performance of the obligation of the other, the former must also perform its own obligation. For its failure to turn over a complete project in accordance with the terms and conditions of the installation contracts, CIGI cannot demand for the payment of the contract price balance from AMC, which, in turn, cannot legally be ordered to pay.[25]

The determination of default on the part of either of the parties depends on the terms of the JVA that clearly categorized the parties' several obligations into two types.

The first type related to the *continuous obligations* that would be continuously performed from the moment of the

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[23] *Asuncion v. Evangelista*, G.R. No. 133491, October 13, 1999, 316 SCRA 848, 873, citing IV Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1985 edition, p. 175.

[24] G.R. No. 181983, November 13, 2013, 709 SCRA 409.

[25] *Id*. at 422-423, 431.

execution of the JVA until the parties shall have achieved the purpose of their joint venture. The continuous obligations under the JVA were as follows: (1) the developer would secure the joint venture property from unauthorized occupants;[26] (2) the owner would allow the developer to take possession of the joint venture property;[27] (3) the owner would deliver any and all documents necessary for the accomplishment of each activity;[28] and (4) both the developer and the owner would pay the real estate taxes.[29]

The second type referred to the *activity obligations*. The following table shows the activity obligations of the parties under the JVA, to wit:

SEQUENCE OF ACTIVITIES (Article XIV of the JVA)		
ACTIVITY	**OWNER OBLIGATION**	**DEVELOPER OBLIGATION**
Signing of JVA.	Sign JVA **Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes **Art. II(g)** Warrant absolute ownership	Sign JVA **Art. V par. 2** Pay real estate taxes **Art. IIIa par. 2** Deposit ₱10M
DEVELOPER to negotiate immediately with all tenants, settlers, occupants, tillers, cultivators of the land in question.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes **Art. II(c)** Allow DEVELOPER to take possession of subject property	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III (c)** To negotiate with occupants

[26] *Rollo,* p. 117 (Art. III(j), JVA).

[27] *Id*. at 116 (Art. II(c), JVA).

[28] *Id*. at 115 (Art. II(b), JVA).

[29] *Id*. at 118 (Art. V par. 2, JVA).

DEVELOPER to pay and settle all monetary claims of all tenants, settlers, occupants, tillers, cultivators of the land.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes **Art. VI** Must consent on the reasonableness of the expenses.	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcel of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(a) par. 1** Advance expense for settlement and relocation **Art. III(a) par. 2** Deposit ₱10M in a joint account of parties.
DEVELOPER to relocate and transfer all the tenants, settlers, occupants, tillers, cultivators of the land to their relocation site, and shall endeavor to fulfill the same and the two immediately preceding paragraphs (b & c) up to the extent of 75% accomplishment thereof within a period of one (1) year from date of execution of this Agreement. The remaining 25% of the same requirements shall be fully accomplished within another 6 months from date of expiration of the original one-year period.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes **Art. II(d)** Agree to allocate and aggregate a resettlement site within the property subject to mutually accepted conditions. **Art. VI** Must consent on the reasonableness of the expenses.	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(a) par. 1** Advance expense for settlement and relocation **Art. III(a)par. 2** Deposit ₱10M in a joint account of OWNER and DEVELOPER **Art. III(c)** Relocate the occupants
DEVELOPER to apply for and secure exemption or conversion permit and such other related requirements needed for the approval of exemption or conversion application of the land in question within a period of one and a half (1 ½) years from date of execution of this Agreement subject to a six (6) month extension.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes **Art. II(f)** Assist DEVELOPER secure exemption from CARL and conversion/reclassification of subject property **Art. III(b)** Give DEVELOPER	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(a)** Advance expenses for exemption, conversion, re-classification expenses. **Art.III(b)** secure

	authority to apply for exemption, conversion and re-classification. **Art. VI** Must consent on the reasonableness of the expenses.	exemption and conversion permit
DEVELOPER to lay out a complete Development Plan	**Art. III(i)** Give written conformity to the development plan	**Art. III(d)** Complete comprehensive development plan (within 6 months to one year from the execution of the JVA)
DEVELOPER to apply for and secure all necessary development permit, performance bonds, environmental compliance certificate, license to sell and all other related requirement from the pertinent Municipal Government , DENR, HLURB and other governmental agencies concerned within a period of 2 years from date of execution of this Agreement.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(f)** Secure development permit, ECC, License to Sell, etc.
DEVELOPER construction stage/ground breaking to commence after release of DAR exemption permit or conversion clearance and approval of other required permits by pertinent agencies of the government.	**Art. II(b)** Deliver any and all documents required for the successful development of the Project **Art. V par. 2** Pay real estate taxes	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(e)** Mobilize development work and solely pay its expenses **Art. III(f)** Develop the property and solely pay its expenses on necessary permits
DEVELOPER to secure approval of subdivision plan and technical description from the	**Art. II(b)** Deliver any and all documents required for the successful development of	**Art. V par. 2** Pay real estate taxes **Art. II(c)** Take possession of the

Bureau of Lands based on the approved scheme and thereafter to petition, follow-up and secure the release of individual titles for all lots in the project in the respective names of the parties form the register of deeds.	the Project **Art. V par. 2** Pay real estate taxes **Art. II(a)** Deliver titles to DEVELOPER **Art. II(a)** Execute Deed of Assignment **Art. III(a)** Pay all expenses for settlement of claims, relocation, application for exemption, conversion, re-classification.	parcels of land **Art. III (j)** Secure property from invasion of squatters and other elements **Art. III(k)** Process titling of lots
Market and Sell the property	Fix selling date	Fix selling date
Owner to reimburse and pay the DEVELOPER		

The activities under the JVA fell into seven major categories, specifically: (1) the relocation of the occupants; (2) the completion of the development plan; (3) the securing of exemption and conversion permits; (4) the obtention of the development permits from government agencies; (5) the development of the subject land; (6) the issuance of titles for the subdivided lots; and (7) the selling of the subdivided lots and the reimbursement of the advances.

For the first activity (*i.e.*, the relocation of the occupants), the developer was obliged to negotiate with the occupants, to advance payment for disturbance compensation, and to relocate the occupants to an area within the subject land, while the owner was obliged to agree to and to allocate the resettlement site within the property, and to approve the expenses to be incurred for the process. Should the owner fail to allocate the site for the resettlement, the obligation of the developer to relocate would not be demandable. Conversely, should the developer fail to negotiate with the occupants, the owner's obligation to allocate the resettlement site would not become due.

As to the second activity (*i.e.*, the completion of the development plan), the developer had the obligation to lay out the plan, but the owner needed to conform to the plan before the same was finalized. Accordingly, the final development plan would not be generated

should the owner fail to approve the lay-out plan; nor would the owner be able to approve if no such plan had been initially laid out by the developer.

In each activity, the obligation of each party was dependent upon the obligation of the other. Although their obligations were to be performed simultaneously, the performance of an activity obligation was still conditioned upon the fulfillment of the continuous obligation, and vice versa. Should either party cease to perform a continuous obligation, the other's subsequent activity obligation would not accrue. Conversely, if an activity obligation was not performed by either party, the continuous obligation of the other would cease to take effect. The performance of the continuous obligation was subject to the resolutory condition that the *precedent* obligation of the other party, whether continuous or activity, was fulfilled as it became due. Otherwise, the continuous obligation would be extinguished.

According to Article 1184 of the *Civil Code*, the condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires, or if it has become indubitable that the event will not take place. Here, the common cause of the parties in entering into the joint venture was the development of the joint venture property into the residential subdivision as to eventually profit therefrom. Consequently, all of the obligations under the JVA were subject to the happening of the complete development of the joint venture property, or if it would become indubitable that the completion would not take place, like when an obligation, whether continuous or activity, was not performed. Should any of the obligations, whether continuous or activity, be not performed, all the other *remaining* obligations would not ripen into demandable obligations while those already performed would cease to take effect. This is because every single obligation of each party under the JVA rested on the common cause of profiting from the developed subdivision.

It appears that upon the execution of the JVA, the parties were performing their respective obligations until disagreement arose between them that affected the subsequent performance of their accrued obligations. Being reciprocal in nature, their respective

obligations as the owner and the developer were dependent upon the performance by the other of its obligations; hence, any claim of delay or non-performance against the other could prosper only if the complaining party had faithfully complied with its own correlative obligation.[30]

A respected commentator has cogently observed in this connection:[31]

> § **135. Same; consequences of simultaneous performance.** As a consequence of the rule of simultaneous performance, if the party who has not performed his obligation demands performance from the other, the latter may interpose the defense of unfulfilled contract (*exceptio non adimpleti contractus*) by virtue of which he cannot be obliged to perform while the other's obligation remains unfulfilled. Hence, the Spanish Supreme Court has ruled that the non-performance of one party is justified if based on the non-performance of the other; that the party who has failed to perform cannot demand performance from the other; and that judicial approval is not necessary to release a party from his obligation, the non-performance of the other being a sufficient defense against any demand for performance by the guilty party.
>
> Another consequence of simultaneous performance is the rule of *compensatio morae*, that is to say that neither party incurs in delay if the other does not or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligations, delay by the other begins.

Yet, the record is bereft of the proof to support the lower courts' unanimous conclusion that the owner had already performed its correlative obligation under the JVA as to place itself in the position to demand that the developer should already perform its obligation of providing the round-the-clock security on the property. In issuing its order of November 5, 2002, therefore, the RTC acted whimsically because it did not first ascertain whether or not the precedent reciprocal obligation of the owner upon which the demanded obligation of the developer was dependent had already been performed. Without

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[30] Article 38, *Civil Code*; please see *Consolidated Industrial Gases, Inc. v. Alabang Medical Centers,* G.R. No. 181983, November 13, 2013, 709 SCRA 409.

[31] IV Caguioa, *Cases and Comments on Civil Law*, Premium Book Store, Manila, 1983 Revised Second Edition, pp. 175-176.

such showing that the developer had ceased to perform a continuous obligation to provide security over the joint venture property *despite complete fulfillment by the owner of all its accrued obligations*, the owner had no right to demand from the developer the round-the-clock security over the 215 hectares of land.

The CA further gravely erred in characterizing the order for the petitioners to implement the round-the-clock security provision of the JVA and the addendum as an established and undisputed interim measure that could be issued pending the resolution of the case on the merits.

Apart from the provisional remedies expressly recognized and made available under Rule 56 to Rule 61 of the *Rules of Court*, the Court has sanctioned only the issuance of the *status quo ante* order but only to maintain the last, actual, peaceable and uncontested state of things that preceded the controversy.[32] The eminent Justice Florenz D. Regalado,[33] an authority on remedial law, has delineated the nature of the *status quo ante* order, and distinguished it from the provisional remedy of temporary restraining order, as follows:

> There have been instances when the Supreme Court has issued a *status quo* order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. This was resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order. The *status quo* order was thus issued *motu proprio* on equitable considerations. Also, unlike a temporary restraining order or a preliminary injunction, a *status quo* order is more in the nature of a cease and desist order, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a *status quo* order does not require the posting of a bond.

The order of November 5, 2002, by directing the developer to provide sufficient round-the-clock security for the protection of the joint venture property during the pendency of the case, was not of the

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[32] *Garcia v. Mojica,* G.R. No. 139043, September 10, 1999, 314 SCRA 207, 215.

[33] I *Remedial Law Compendium*, 6th Revised Edition, 1997, p. 651.

nature of the *status quo ante* order because the developer, as averred in the complaint, had not yet provided a single security watchman to secure the entire 215 hectares of land for several years.[34] Also, the owner stated in the comment to the petition that the developer had dismissed all the security guards posted in the property since 1997.[35] At the time of the filing of the complaint for specific performance on February 29, 2000, therefore, the last actual, peaceable and uncontested state of things preceding the controversy was the absence of such security, not the installation of the security personnel/measures. In fact, the failure of the developer to provide the round-the-clock security itself became the controversy that impelled the owner to bring the action against the petitioners.

By preliminarily directing the developer to provide sufficient round-the-clock security for the protection of the joint venture property during the pendency of the case, the November 5, 2002 order of the RTC did not come under the category of the *status quo ante* order that would issue upon equitable consideration, or even of an injunctive relief that would issue under Rule 58 of the *Rules of Court*. Hence, the issuance of the order constituted a blatant jurisdictional error that needed to be excised. Verily, a jurisdictional error is one by which the act complained of was issued by the court without or in excess of jurisdiction.[36] *Without jurisdiction* means that the court acted with absolute want of jurisdiction. *Excess of jurisdiction* means that the court has jurisdiction but has transcended the same or acted without any statutory authority.[37]

Although the RTC undoubtedly had jurisdiction to hear and decide the principal action for specific performance as well as to act on the motions submitted to it in the course of the proceedings, the distinction between jurisdiction over the case and jurisdiction to issue an interlocutory order as an ancillary remedy incident to the principal action should be discerned. We have frequently declared that a court may have jurisdiction over the principal action but may nevertheless act irregularly or in excess of its jurisdiction in the course of its proceedings

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[34] *Rollo,* p. 184.

[35] *Id*. at 1014.

[36] *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 73.

[37] *Leynes v. Former Tenth Divison of the Court of Appeals*, G.R. No. 154462, January 19, 2011, 640 SCRA 25, 39.

by the granting of an auxiliary remedy.[38] In *Leung Ben v. O'Brien*,[39] for instance, this Court has thus clarified:

> It may be observed in this connection that the word "jurisdiction" as used in attachment cases, has reference not only to the authority of the court to entertain the principal action but also to its authority to issue the attachment, as dependent upon the existence of the statutory ground. (6 C. J., 89.) This distinction between jurisdiction to issue the attachment as an ancillary remedy incident to the principal litigation is of importance; as a court's jurisdiction over the main action may be complete, and yet it may lack authority to grant an attachment as ancillary to such action. This distinction between jurisdiction over the ancillary has been recognized by this court in connection with actions involving the appointment of a receiver. Thus in Rocha & Co. vs. Crossfield and Figueras (6 Phil. Rep., 355), a receiver had been appointed without legal justification. It was held that the order making the appointment was beyond the jurisdiction of the court; and though the court admittedly had jurisdiction of the main cause, the order was vacated by this court upon application of a writ of certiorari. (see Blanco *vs.* Ambler, 3 Phil. Rep., 358, Blanco vs. Ambler and McMicking 3 Phil. Rep., 735, Yangco *vs*. Robles, 1 Phil. Rep., 404.)
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> By parity of reasoning it must follow that when a court issues a writ of attachment for which there is no statutory authority, it is acting irregularly and in excess of its jurisdiction, in the sense necessary to justify the Supreme Court in granting relief by the writ of certiorari.

WHEREFORE, the Court **GRANTS** the petition for review on certiorari; **REVERESE** and **SET ASIDE** the decision promulgated on April 27, 2005 and the resolution promulgated on September 12, 2005; **NULLIFIES** the orders issued on November 5, 2002 and May 19, 2003 in Civil Case No. 67813 by the Regional Trial Court, Branch 67, in Pasig City; **DIRECTS** the Regional Trial Court, Branch 67, in Pasig City to resume the proceedings in Civil Case No. 67813 with dispatch; and **ORDERS** the respondents to pay the cost of suit.

SO ORDERED.

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

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[38] *Campos v. Del Rosario*, 41 Phil. 45, 48 (1920).

[39] 38 Phil. 182, 186-187 (1918).

THIRD DIVISION

[G.R. No. 174387. December 9, 2015]

BF CORPORATION, *petitioner, vs.* **WERDENBERG INTERNATIONAL CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONSTRUCTION AGREEMENT; PETITIONER CONSTRUCTION COMPANY IS ENTITLED TO AN EXTENSION OF 21 DAYS FOR THE DELAY IN VIEW OF THE PRESENCE OF LAYERS OF CONCRETE SLABS AND EXTRA SOFT CONDITION OF THE SOIL THAT WERE DISCOVERED DURING THE EXCAVATION STAGE.— We disagree that petitioner is entitled to a full extension of its request (30 – 40 days for the removal of the concrete slabs and 14 days for arresting the soil condition). We hold that for these excavation works, it is fair to grant petitioner with a total extension of only 21 days or three weeks. The existence of the layers of concrete slabs and the extra soft condition of the soil was not easily determinable upon site inspection. In fact, these were not included in the Construction Agreement or in the Minutes of the Pre-Bid Conferences. Petitioner would have considered in its bid plan and proposal the attendant time and costs the measures required to address these conditions had it known about them from the beginning. In *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc*., we deferred to the expert opinion of the Construction Industry Arbitration Commission that in practice, removal of underground obstructions is a "major item of work" that needs to be included in the contractor's scope of work. It cannot be understood as being merely subsumed under the general heading "miscellaneous." x x x We rule, however, that the removal of the concrete slabs and the filling of boulders may have taken two or three more times in effort to accomplish than usual. The removal also took time because of the frequent breakdown of the heavy equipment petitioner used in the process, and petitioner's failure to provide enough manpower. x x x We agree with the CA that petitioner should

have taken measures to address the problem with the broken drainage. We note that as of January 16, 1995, petitioner had failed to properly stabilize the soil and obtain the required elevation of the area. This is a lapse which merits a reduction on petitioner's estimate for extension. We merely reduce the extension on the finding that at most, the broken drainage only aggravated the soil condition, but doesn't change the fact that it had been extra soft from the start. It was not even shown when the drainage broke and leaked and whether its effects were visible or known to petitioner from the beginning. Furthermore, in the same manner that petitioner should answer for the faulty equipment used in the removal of the concrete slabs, petitioner should also answer for the delay in the deliveries of the boulders used for filling in the excavated area. All told, both parties were responsible for the delay caused by the excavation and earthworks. Thus, even if petitioner may be held liable for negligence in the performance of its obligation, Article 1172 of the Civil Code provides that such liability may be regulated by the courts according to the circumstances of the case. Here, the existence of concrete slabs and the extra soft soil remained a condition beyond the control of petitioner. Since these caused an unforeseen delay in the excavation stage, petitioner should be credited accordingly. We find that a reduced extension of 21 days for the earth and demolition works is commensurate and fair.

2. ID.; ID.; ID.; PETITIONER IS ENTITLED TO AN EXTENSION OF 38 DAYS FOR THE DELAY IN SECURING THE BUILDING PERMIT AND FOR THE STOP WORK ORDER ISSUED BY THE CITY HALL.— [A]lthough the obligation to obtain the permit will ultimately devolve to petitioner, respondent had to act first by securing the ECC from the DENR, a prerequisite to the building permit application. x x x We disagree with the CA that petitioner was not vigilant enough. The December 13, 1994 letter was, effectively, a reminder from which respondent should have taken its cue. Petitioner stated in the letter that it has already done its part in the filing of the building permit as required in the contract. But due to the unavailability of an ECC and other permits, petitioner informed respondent it is losing precious time. Without a building permit, petitioner cautioned respondent that its works will be limited to those covered by its existing excavation permit, which were excavation and fencing.

Despite this reminder, respondent secured an ECC only on February 22, 1995. Respondent should, therefore, bear the effect of the delay caused by the stop work order from the city hall. This is but fair because it failed in its obligation to initiate the building permit application. Respondent should further bear the effect of the delay because its revision of the building plan contributed to delaying the building permit application. x x x As such, it is only fair that respondent bear the consequences of the 31-day stop work order of the city hall because it failed in its duty of securing the building permit. Thus, for the delay in securing the building permit, we find that petitioner is entitled to a total extension of 38 days.

3. **ID.; ID.; ID.; PETITIONER IS ENTITLED TO AN EXTENSION OF 40 DAYS FOR THE CHANGE ORDERS AND EXTRA WORKS.—** [O]ut of the 34-day extension respondent initially granted petitioner, 14 days were allocated for the construction of shear walls, which was one of the change orders and additional works respondent allegedly requested from petitioner. When petitioner requested for re-evaluation, respondent granted an additional extension of 26 days, which appear to cover for the alleged change orders and extra works. x x x [D]uring cross-examination, Engr. Aliño admitted that "[the] extra work, change orders would cover canvassing, procurement, installation and fabrication of materials which would necessitate substantial additional time and money on the part of [petitioner]." We hold respondent for the above admissions. Notwithstanding the nonconformity with the literal terms of Section 16 of the Construction Agreement, respondent liberally granted extensions for the change orders and extra works. As correctly pointed out by petitioner, "[t]he construction agreement does not nullify the change orders/extra works that were already completed without any written agreement. In fact, Werdenberg had partially paid [therefor] leaving an unpaid balance of only ₱141,944.93." In its Answer with Counterclaim, respondent indeed stated that petitioner is entitled to Php 141,944.93 for the change orders and additional works. Thus, we hold that petitioner is entitled to a total extension of 40 days for the change orders and extra works.

4. **ID.; ID.; ID.; RESPONDENT IS ENTITLED TO LIQUIDATED DAMAGES EQUIVALENT TO 18 DAYS OF DELAY.—** The liability for liquidated damages is governed by Articles 2226

to 2228 of the Civil Code, where the parties to a contract are allowed to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. The Construction Agreement provides that upon failure to complete the work agreed upon within the stipulated time, the contractor agrees to pay the owner Php 43,800.00 for every day of delay. As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation. We have already ruled that the parties were mutually at fault. Petitioner is entitled to an extension of only 112 days counted from April 7, 1995 or until July 28, 1995. Thus, from July 28, 1995 to August 15, 1995, or a period of 18 days, petitioner had already been in default. Consequently, respondent is entitled to Php 788,400.00 as liquidated damages.

5. ID.; ID.; ID.; RESPONDENT IS ENTITLED TO THE EXPENSES FOR REPAINTING JOB.— Petitioner acknowledged these defects in a letter dated October 11, 1995 and informed respondent that it will proceed with repainting. Clearly, the defects in the painting job were covered by the guarantee of petitioner. x x x Section 15 of the Construction Agreement provides in part: 15. GUARANTEE. – It is expressly agreed and understood that the CONTRACTOR guarantees the work against all defects of materials and workmanship for a period of (1) one year from the date of issuances [sic] of the letter of acceptance. Any defects discovered during said period shall be made good by the CONTRACTOR at its own expense upon notification in writing by the OWNER. x x x However, the repainting job still proved deficient. In a letter dated May 31, 1996, respondent informed petitioner that it has taken the initiative to get an outside contractor for the subsisting deficiencies. Respondent subsequently contracted Silver Line Builders for the repainting job in the contract price of Php1,050,000.00. Petitioner should answer for these expenses, pursuant to Article 1167 of the Civil Code[.] x x x Section 6 of the Construction Agreement also provides, in part, that if the work is found defective in any material respect due to the fault of the contractor, the defects

should be removed and replaced and all expenses of satisfactory reconstruction of the replaced materials shall be for its sole account.

6. ID.; ID.; ID.; RESPONDENT IS ENTITLED TO A 10% RETENTION FEE.— In *H.L. Carlos Construction, Inc. v. Marina Properties Corporation,* we held that in the construction industry, the 10% retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work—if any—becomes necessary. Section 14 of the Construction Agreement provides the conditions for the release of the 10% retention fee x x x Petitioner has complied with the conditions, which are pre-requisites for the release of the retention fee. Hence, the CA was correct in granting the same to respondent.

APPEARANCES OF COUNSEL

Castelo & Associates Law Office for petitioner.
Ocampo & Ocampo Law Offices for respondent.

D E C I S I O N

JARDELEZA, *J.*:

THE CASE

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal of the Resolution[1] of the Former Seventh Division of the Court of Appeals (CA) dated August 23, 2006, which held respondent entitled to liquidated damages equivalent to 70 days of delay, 10% retention fee, and payment for expenses for repainting job arising from a construction dispute.

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[1] Penned by former CA Associate Justice Bienvenido L. Reyes, who is now a member of this Court, and concurred in by Associate Justice Ruben T. Reyes and former CA Associate Justice Jose C. Mendoza, who is also now a member of this Court. *Rollo*, pp. 10-35.

FACTS

Petitioner[2] and respondent[3] entered into a Construction Agreement, under which petitioner would construct for respondent a three-story building housing a meat processing plant and a showroom office in Yakal Street, Makati City. The parties agreed on a contract price of Php 43,800,000.00 and a completion and delivery date of April 7, 1995.[4] Due to several delays, however, petitioner turned over the building only on August 15, 1995.[5] Respondent did not accept the building, asserting it had many deficiencies. Respondent paid petitioner only Php 38,088,445.00.[6] Thus, petitioner filed a complaint for sum of money against respondent before the Pasig Regional Trial Court (RTC) for the balance of Php 4,771,221.59.[7] In addition, petitioner prayed for the payment of Php 141,944.93 representing expenses incurred due to work on respondent's changes or additional orders, and for a judgment that the liquidated damages claimed by respondent in the amount of Php 3,066,000.00 was without basis.[8]

Petitioner enumerated in its complaint the following reasons why the project was delayed:

1. At the start of the excavation phase, petitioner had to remove two to three layers of concrete slabs over the construction site, instead of only 1 layer.[9] The soil was

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[2] Petitioner is a corporation organized and existing under Philippine laws. It is engaged in the business of erecting buildings and other structures, among others.

[3] Respondent is a corporation organized and existing under Philippine laws. It is engaged in the manufacture, distribution and retail of gourmet products.

[4] CA Decision, *rollo*, p. 79.

[5] RTC Decision, *id.* at 73-74.

[6] *Id.* at 74.

[7] RTC records, pp. 1-7.

[8] *Id.* at 5-6.

[9] *Id.* at 2.

also found to be extra soft and had to be filled with boulders. Respondent granted petitioner an extension of only 7 days, but the remedial work required in the removal of the extra layers of concrete slabs, and in stabilizing the condition of the soil, took 30 – 40 days to finish.[10]

2. Respondent and another corporation, Sinclair Paints, engaged in a boundary dispute. Respondent ordered petitioner to suspend the excavation works until the dispute was resolved. The suspension took 6 days, yet petitioner was not credited with an extension.[11]

3. The building permit was not secured on time. The application for the building permit was not initially processed by the Building Official of Makati City because respondent failed to timely secure the required Environmental Clearance Certificate (ECC).[12]

4. Respondent informed petitioner that the building plan will be revised, such that the locations of the columns, beams and walls to be put up were to be determined only through the verbal instructions of respondent's construction manager.[13]

5. On February 20, 1995, the City Building Office served petitioner with an order to stop all construction works until a building permit is secured. Despite this "stop work order," respondent ordered petitioner to continue with the construction discreetly.[14]

6. It was only on March 23, 1995 or after the lapse of 31 days from the "stop work order" when the building permit was secured.[15]

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[10] CA Decision, *rollo*, p. 89.

[11] RTC records, p. 2.

[12] *Id.*

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

[14] *Id.* at 3.

[15] *Id.*

Thus, while the demolition, excavation, and initial construction works started on November 26, 1994, regular construction works began only 113 days after, or on March 24, 1995.[16]

Petitioner further alleged that even after the original completion date of April 7, 1995, construction works continued.[17]

Respondent even ordered substantial changes and additional works after April 7, 1995, which took 130 days to complete, or until August 14, 1995.[18] In total, petitioner claimed it was entitled to an extension of 243 days, yet asked for only 130 days.[19] Respondent, however, granted petitioner with a mere 60-day extension and held it in default for the remaining 70 days. Consequently, petitioner was charged with liquidated damages computed at Php 43,800.00 for every day of delay, or a total of Php 3,066,000.00.[20]

In its defense, respondent attributed the delays to the fault of petitioner. Respondent denied suppressing information about the existence of the extra layer of concrete slabs and the extra soft condition of the soil.[21] It alleged that petitioner was given this information during the pre-bidding conference, and that petitioner inspected the site and was present during soil testing.[22] Respondent averred that petitioner was responsible for securing the required permits.[23] As to the changes and additional works, respondent asserted it gave petitioner a 60-day extension, even if these works were merely linear, meaning they may be performed without interrupting the normal pace of the construction work.[24]

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[16] *Id.* at 4.

[17] *Id.*

[18] *Id.* at 3-4.

[19] *Id.* at 4.

[20] *Id.*

[21] *Id.* at 20.

[22] *Rollo*, p. 74.

[23] RTC records, pp. 22-23.

[24] *Id.* at 24-27.

In sum, respondent blamed petitioner's poor workmanship, persistent inaction in satisfying respondent's complaints, and lack of, or defective equipment, for the delays.[25] Respondent claimed that due to petitioner's poor workmanship, the turnover in August 1995 was merely partial because there were several works that needed to be adjusted and corrected, to which petitioner agreed.[26] This poor workmanship on the part of petitioner pushed the actual turnover to October 15, 1995.[27] Nevertheless, respondent maintained that out of benevolence, it computed delay only from June 6, 1995 to August 15, 1995 (70 days) instead of up to October 15, 1995.[28] Even then, after the turnover, respondent had to hire another contractor to do corrective and repainting works because of the same poor workmanship of petitioner. Respondent allegedly incurred additional expenses worth Php 1,202,888.50 for the repainting work of the other contractor.[29]

After trial, the RTC ruled in favor of petitioner.[30] It duly noted the causes of delay petitioner outlined and concluded that the 60-day credit respondent allowed for delay was not commensurate to the total allowable or justifiable delay. Instead, the RTC ruled that petitioner was entitled to a 130-day extension it requested. Thus, the liquidated damages respondent deducted from the agreed contract price was baseless and unjustified. The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of plaintiff **BF CORPORATION** and against defendant **WERDENBERG INTERNATIONAL CORPORATION** and hereby orders defendant to pay plaintiff the following amounts, to wit:

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[25] *Id.* at 27.

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

[27] *Id.* at 24.

[28] *Id.* at 27.

[29] *Id.*

[30] Through Judge Santiago G. Estrella. *Rollo*, pp. 73-77.

1. Four Million Seven Hundred Seventy One Thousand Two Hundred Twenty One Pesos and 59/100 (₱4,771,221.59) corresponding to the unpaid balance of the contract price, inclusive of the retention fee and net of electric/water billings. Rectification works and other charges at twelve (12%) percent interest per annum from the filing of this suit until fully paid;

2. One Hundred Forty One Thousand Nine Hundred Forty Four and 93/100 (₱141,944.93), corresponding to the unpaid balance of the change orders/extra works done, net of advances, taxes and other charges at twelve (12%) percent interest per annum from the filing of this suit until fully paid;

2. Two Hundred Thousand Pesos (₱200,000.00) for and as attorney's fees; and,

4. [C]ost of suit.

SO ORDERED.[31]

On appeal, the CA modified the Decision of the RTC and held respondent entitled to its claim of liquidated damages of Php 3,066,000.00 corresponding to petitioner's 70-day delay. The dispositive portion of the CA Decision[32] reads:

WHEREFORE, the decision appealed from is hereby ***MODIFIED*** and We deem it reasonable to render a decision imposing, as We do hereby impose, upon the defendant-appellant Werdenberg to pay BF Corporation the amount of ₱1,847,167.52 to complete the payment of its professional fee under their Construction Agreement based on the following computation:

	₱4,771,222.59	–	unpaid balance under the Agreement
+	141,944.93	–	unpaid balance for change orders
	₱4,913,167.52	–	total amount due to BFC
Less:	₱3,066,000.00	–	liquidated damages by BFC
	₱1,847,167.52	–	amount due to BFC

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

[32] Penned by former CA Associate Justice Bienvenido L. Reyes, who is now a member of this Court, and concurred in by Associate Justice Ruben T. Reyes and former CA Associate Justice Jose C. Mendoza, who is also now a member of this Court. *Id.* at 79-104.

the total sum being payable upon the finality of this decision. Upon failure to pay on such finality, twelve (12%) per cent interest per annum shall be imposed upon afore-mentioned amount from finality until fully paid.

SO ORDERED.[33]

On Motion for Reconsideration, the CA modified its Decision.[34] On re-evaluation of the evidence, the CA ruled that respondent was entitled to the expenses worth Php 1,050,000.00 it incurred for the repainting job done by another contractor. The CA also granted respondent's claim for a retention fee of 10%. The CA's new computation[35] reads:

₱4,771,222.59	–	unpaid balance under the Agreement
+ 141,944.93	–	unpaid balance for change orders
₱4,913,167.52	–	total amount due to BFC
Less: 3,066,000.00	–	liquidated damages by BFC
₱1,847,167.52		
Less: 1,050,000.00	–	expenses for painting job due to Werdenberg
₱797,167.52	–	amount due to BFC
Less: 79,716.75	-	10% retention fee by Werdenberg
₱717,450.75	-	amount due to BFC

Hence, this petition, which argues in the main that the CA misappreciated relevant facts and prays that the decision of the RTC be reinstated.

OUR RULING

Petitioner raises questions of fact, which generally, we cannot entertain in a Rule 45 petition. We are not obliged to review all over again the evidence which the parties adduced in the courts below. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.[36] This exception is present here.

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

[34] Resolution dated August 23, 2006, *id.* at 10-35.

[35] *Id.* at 35.

[36] *Miro v. Mendoza Vda. De Erederos*, G.R. Nos. 172532 & 172544-45, November 20, 2013, 710 SCRA 371, 386-387.

The RTC ruled in favor of petitioner, finding that the delay in the construction was not its fault. The RTC found the extension of the delivery date of 60 days granted by respondent incommensurate to the total number of days of justifiable delay. The CA, on the other hand, did not find all the grounds raised by petitioner as causes for justifiable delay to be meritorious. The CA held petitioner at fault when it did not adopt measures to arrest soil deterioration.[37] The CA also held that petitioner should have notified respondent that it (petitioner) would stop work until the required building permit was secured.[38] Neither did petitioner inform respondent that the revision of the building plan will cause delay. Thus, such revision merely required a reorientation of the project.[39] This was also true with the change orders and additional works. The CA gave more credence to the testimony of respondent's witness, Engr. Antonio Aliño, an engineer of 37 years' experience. Engr. Aliño testified that the change orders and additional works merely required linear activities that did not affect the construction time.[40] The CA then deferred to the approximation of respondent that petitioner is, under the facts, entitled to only 60 days of extension of the contracted completion date of April 7, 1995. This meant that the new completion date can be moved to June 6, 1995.[41] Since, however, the turnover was made only on August 15, 1995, petitioner incurred delay for 70 days. For this, the CA found petitioner liable for liquidated damages for 70 days of delay.[42]

On reconsideration, the CA also noted that the defects on the painting job, which petitioner acknowledged and tried to rectify, were not solved at all. In a letter dated May 31, 1996, respondent informed petitioner that it (respondent) would hire another contractor to do the repainting job. Thus, the CA found

[37] *Rollo*, p. 93.

[38] *Id.* at 95.

[39] *Id.* at 96.

[40] *Id.* at 99-101.

[41] *Id.* at 102.

[42] *Id.*

respondent entitled to liquidated damages, retention fee, and reimbursement for the expenses in the repainting job.[43]

The petition is partly meritorious.

To recall, petitioner originally claimed it was entitled to a 113 day extension of the contracted delivery date because of various delays that moved the regular construction date from November 26, 1994 to March 24, 1995. These various delays were broken down as follows:

- Removal of layers of unforeseen concrete slabs, which took 30 – 40 days;
- Rectification of the extra soft condition of the soil, which took 14 days;
- Revision of the building plan, which affected the petitioner's conduct of work for a month, or 30 days;
- One month "stop work order" from the City Hall of Makati due to lack of construction permit, or 30 days.

Petitioner argues that respondent concealed the existence of the concrete slabs and the condition of the soil, which necessitated additional work, expense, and use of sophisticated equipment.[44] The building plan also had to be revised in an attempt to avoid the necessity of submitting an ECC as a measure to facilitate the approval of the application for a building permit. At the same time, however, the revised building plan was needed as supporting document to the application for a building permit, such that without it, the application was put on hold.[45] The revision also called for a 180-degree reorientation of the building floor plan, which stalled the progress of construction for a month because petitioner had to rely on and await mere verbal instructions from respondent's representatives.[46] When the revised building plan was finally submitted to petitioner in January

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[43] *Id.* at 29-32.

[44] Petition for Review, *id.* at 58-59.

[45] *Id.* at 53.

[46] *Id.* at 61.

1995,[47] the building permit application was further delayed because the city hall officials questioned the provisions on the parking area.[48] Thus, due to the lack of building permit, the city hall issued and served a "stop work order" in the construction premises on February 20, 1995. This caused work to stop for a month, or until March 23, 1995, when the building permit was finally secured.

Petitioner also claimed it was entitled to a 130-day extension corresponding to various additional works and change orders from April 7, 1995 to August 14, 1995. The total number of days for extension, therefore, was 243 days. Petitioner settled for 130 days instead.

In reply to petitioner's request for extension, respondent initially granted 34 days, which were broken down as follows:

- 7 days for the removal of concrete slabs
- 7 days for the delay in the construction permit
- 14 days for the construction of shear walls
- 6 days for holidays

According to respondent, it granted only 7 days for the removal of concrete slabs because the delay was caused by the frequent breakdown of petitioner's equipment. Respondent also granted only 7 days for the delay in the construction permit because it did not prevent petitioner from continuing with the construction. As for the construction of shear walls, a part of the additional works which petitioner claimed took 30 – 40 days to finish, respondent granted only 14 days because the work was gradual. The rest of the additional works and change orders were categorized by respondent as either linear activities that can be executed simultaneously with the main work or repeat jobs due to petitioner's poor workmanship and thus, did not merit any extension. On re-evaluation, respondent granted an additional 26 day extension, for a total extension of 60 days.

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[47] *Id.* at 60.

[48] TSN, May 17, 1999, p. 16.

We stress at the outset that in its decision, the CA found petitioner entitled to extensions of 35 days for the removal of concrete slabs, and 7 days for the work stoppage brought by a boundary dispute with Sinclair Paints. The CA then upheld respondent's total grant of a 60 day extension. The computation, however does not add up. Petitioner would be entitled to a 42 day extension for the concrete slabs and the boundary dispute alone, leaving an additional extension of 18 days for other causes of delay. While the CA found petitioner not entitled to any extension for the supposed delay in the building permit, it ignored the extensions of 14 days for the construction of the shear walls, and 6 days for the holidays which respondent already granted in favor of petitioner. These would have totalled to an additional extension of 20 days. In effect, the CA's computation would not jibe with that of the respondent's.

At any rate, in determining whether respondent is entitled to liquidated damages and how much it is entitled to, we reach a different conclusion than those of the lower courts.

Petitioner is entitled to an extension of 21 days for the delay during the excavation stage

The daily reports[49] of respondent's project manager, Engr. Arnulfo Delima, show that petitioner performed earth and demolition works involving excavation, boulders and gravel filling, and soil poisoning from December 9, 1994 to February 14, 1995. But in the construction schedule[50] petitioner submitted to respondent, the duration of the earth and demolition works should have only been from and until mid-December 1994.[51] Petitioner accuses respondent of suppressing information about the existence of the concrete slabs and the extra soft condition of

[49] Exhibit "18", RTC records, pp. 347-348; Exhibits "18-B", "18-C", "18-D", "18-E", "18-F", "18-G", *id.* at 347-354; Exhibits "18-O" and "18-P", RTC records, pp. 362-363.

[50] *Id.* at 371.

[51] *Id.*

the soil, which were material in petitioner's determination of the time and cost required by the works. Thus, petitioner asks for a total extension of approximately 1 and 1/2 months equivalent to the actual period it took petitioner to perform these earthworks.

We disagree that petitioner is entitled to a full extension of its request (30 – 40 days for the removal of the concrete slabs and 14 days for arresting the soil condition). We hold that for these excavation works, it is fair to grant petitioner with a total extension of only 21 days or three weeks.

The existence of the layers of concrete slabs and the extra soft condition of the soil was not easily determinable upon site inspection. In fact, these were not included in the Construction Agreement or in the Minutes of the Pre-Bid Conferences.[52] Petitioner would have considered in its bid plan and proposal the attendant time and costs the measures required to address these conditions had it known about them from the beginning.[53] In *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*,[54] we deferred to the expert opinion of the Construction Industry Arbitration Commission that in practice, removal of underground obstructions is a "major item of work" that needs to be included in the contractor's scope of work. It cannot be understood as being merely subsumed under the general heading "miscellaneous."[55]

Here, the CA agreed with petitioner that the concrete slabs were unforeseen and their removal caused delay in the construction phase. The CA also acknowledged that the extra soft condition of the soil cannot be easily seen with the naked eye. The CA thus held "it is understandable that BFC could not be expected, upon ocular inspection, to immediately determine the soil condition."[56]

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[52] TSN, March 13, 2000, p. 5.

[53] TSN, September 27, 1999, p. 7.

[54] G.R. No. 143154, June 21, 2006, 491 SCRA 557.

[55] *Id.* at 576.

[56] CA Decision, *rollo,* p. 92.

We rule, however, that the removal of the concrete slabs and the filling of boulders may have taken two or three more times in effort to accomplish than usual.[57] The removal also took time because of the frequent breakdown of the heavy equipment petitioner used in the process, and petitioner's failure to provide enough manpower. The daily reports[58] support this and Engr. Delima also convincingly testified:

Q: Can you describe to us the progress of the work by BF?

A: When I supervised the work, our schedules have not been met, we have some delays in the excavations, madam.

Q: In the excavation stage, what delays were incurred if any?

A: Their equipments [sic] were always not functioning. Although, we asked them for another equipment, they added one (1) equipment, but still that equipment was not functioning, madam.

Q: How about the work schedules, the shifting of men during the construction?

A: We also requested the B.F. to add some men for us to be able to work for 24-hour [sic], but still, it took time for them to add men, madam.[59]

Petitioner was obliged to provide "all materials, labor, tools, and equipments [sic], and other incidentals required for the complete and satisfactory completion of the project"[60] for the project. Under Section 5 of the Construction Agreement, "[a]ll materials and labor of every grade and equipment necessary for the prosecution and termination of the work shall be of the best grade of their respective kind and the quality of workmanship shall be in accordance with the requirements of the contract

[57] TSN, March 13, 2000, p. 6.

[58] Exhibits "18-B", "18-C", "18-E", RTC records, pp. 349-350, 352.

[59] TSN, January 17, 2000, pp. 12-13.

[60] Exhibit 19, RTC records, p. 366.

and its Annexes."[61] Petitioner was, therefore, obliged to provide the appropriate equipment in good running condition. Failing on this, petitioner is not entitled to the full extension of 30 – 40 days it requested.

We also disagree that petitioner is entitled to a full extension of 14 days it requested for the delay caused by the extra soft condition of the soil.

Firstly, we defer to the testimony of Arch. Orencio Sare, Jr., the designer of the building, that the soil investigation report[62] dated September 1994 was not crucial for the contractor's work. Arch. Sare testified that the report was only instrumental for the designer's work and not for the contractor's because it was intended to determine the soil bearing capacity.[63] Hence, we agree that there was no malicious intention to suppress the soil investigation report from petitioner, even if it was only furnished to petitioner after the contract was awarded in November 1994.[64] This is not to say, however, that the contractor should not be apprised of the actual condition of the soil before bidding. The soil report could have assisted petitioner in estimating the extent of its excavation works. As Mr. Gerardo Apoderado[65] testified, the extra soft condition of the soil spelled problems because the area cannot be excavated to the required elevation.[66] In its letter dated December 9, 1994,[67] petitioner proposed to respondent that since the actual soil condition is very soft, thicker boulders and a thicker gravel base should be used. Petitioner then informed respondent that these changes, on top of the demolition of unforeseen concrete slabs and arresting the soil

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[61] Exhibit "A", *id.* at 152.

[62] Exhibit "20", *id.* at 372-375.

[63] TSN, September 27, 1999, p. 9.

[64] TSN, May 17, 1999, p. 6.

[65] Petitioner's project manager.

[66] TSN, February 8, 1999, pp. 7-8.

[67] Exhibit "B", RTC records, p. 156.

condition, would result in additional working time and cost. Respondent did not object to or refute this letter.[68]

Respondent claims, however, that petitioner was responsible for the delay caused by the soil condition because it failed to immediately provide remedies when water from a broken drainage nearby seeped in.[69] Thus, in a letter dated January 16, 1995, respondent reminded petitioner of the required bottom elevation and noted that petitioner's latest excavation was undercut. Respondent also brought to petitioner's attention the muddy condition of the excavated area.[70]

We agree with the CA that petitioner should have taken measures to address the problem with the broken drainage. We note that as of January 16, 1995, petitioner had failed to properly stabilize the soil and obtain the required elevation of the area.[71] This is a lapse which merits a reduction on petitioner's estimate for extension. We merely reduce the extension on the finding that at most, the broken drainage only aggravated the soil condition, but doesn't change the fact that it had been extra soft from the start. It was not even shown when the drainage broke and leaked and whether its effects were visible or known to petitioner from the beginning. Furthermore, in the same manner that petitioner should answer for the faulty equipment used in the removal of the concrete slabs, petitioner should also answer for the delay in the deliveries of the boulders used for filling in the excavated area.[72]

All told, both parties were responsible for the delay caused by the excavation and earthworks. Thus, even if petitioner may be held liable for negligence in the performance of its obligation, Article 1172 of the Civil Code[73] provides that such liability may

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[68] TSN, March 13, 2000, p.5.

[69] TSN, April 2, 2001, p. 4.

[70] Exhibit "18-H", RTC records, p. 355.

[71] *Id.*

[72] Exhibit "18", *id.* at 347-348.

[73] Art. 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

be regulated by the courts according to the circumstances of the case. Here, the existence of concrete slabs and the extra soft soil remained a condition beyond the control of petitioner. Since these caused an unforeseen delay in the excavation stage, petitioner should be credited accordingly. We find that a reduced extension of 21 days for the earth and demolition works is commensurate and fair.

Petitioner is entitled to an extension of 38 days for the delay in securing the building permit and for the stop work order issued by the Makati City Hall.

The Construction Agreement provides that the agreed period of completion shall be automatically and correspondingly extended if the works are suspended to comply with any rule or order of public or government authorities.[74] We agree with the CA's explanation that before this provision can be considered in favor of petitioner, the latter should not be at fault.[75] We rule that petitioner was not at fault.

Under the Construction Agreement, terms and conditions reflected in the minutes of the pre-bid conferences shall be effective and binding upon the parties as terms and conditions of the Construction Agreement, except when modified or altered by the latter.[76] The minutes of the second pre-bid conference on November 9, 1994 provided that respondent, through its designer, A.L. Aliño Engineers and Architects, will initiate securing the building permit, and which activity will be continued by the winning bidder.[77] In other words, although the obligation

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[74] Construction Agreement, Section 3(1) Time of Performance, Exhibit "A", RTC records, p. 151.

[75] Resolution dated August 23, 2006, *rollo,* pp. 22-23.

[76] Construction Agreement, Section 1 Scope of Work, Exhibit "A", RTC records, p. 150.

[77] Exhibit "L-1", *id.* at 60.

to obtain the permit will ultimately devolve to petitioner, respondent had to act first by securing the ECC from the DENR, a prerequisite to the building permit application. Arch. Sare confirmed this understanding between the parties:

Q: Mr. Sare, in the minutes of the pre-bidding conference held on November 9, 1994, at the Gold Ranch Restaurant in Makati wherein you claimed you were present, it was agreed among others by and between the plaintiff and defendant that A.L. Aliño Engineers will initiate the securing of building permit and will be continued by the winning bidder and at that time you were still connected with A.L. Aliño Engineers, am I correct?

A: Yes, sir.

Q: When you said initiate in securing the building permit it means [A.L.] Aliño Engineers shall file the corresponding application, is that correct?

A: Yes, sir.

xxx xxx xxx

Q: Is it not a fact considering that the nature of the business to be conducted in the proposed construction project a DENR, ECC clearance is required to accompany the application for issuance of building permit?

COURT: In other words, the building official will not authorize the issuance of building permit without the DENR, ECC clearance?

Atty. Morga: Yes, your honor.

Witness: We know that, sir.

COURT: (To the witness) So you were made aware of that requirement that the building official cannot process any application for issuance of building permit without the presentation of the DENR, ECC clearance previously secured by the applicant before the building permit, is that correct?

Witness: Yes, your honor.

xxx xxx xxx

Q: Pursuant to the highlights of the meeting which by the way was previously marked as Exhs. "L," "L-1" and Exh. "10" for the defendant, did the defendant apply for the necessary ECC clearance with the DENR?

A: Yes, sir.

Q: The defendant did that precisely because of what appeared in the highlights of the meeting on November 9, 1994, am I correct?

A: Yes, sir.

Q: When was that the defendant filed for the issuance of ECC clearance from the DENR? Was it during the progress of the construction?

A: Yes, sir.[78]

Respondent is bound by the foregoing terms in the Construction Agreement and as reflected in the minutes. Contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[79]

In a letter dated December 13, 1994, petitioner informed respondent that it has applied for the building permit, but that respondent, in turn, has to secure the ECC, which is "vital in the application for [the] building permit."[80] Petitioner reminded respondent that as the owner, it (respondent) was in a better position to know the process flow of the meat processing plant.[81] Thus, it was only logical that respondent should be the one to file and secure the ECC. The CA has also acknowledged this much, saying that it was appropriate and understandable that the duty to secure the ECC should devolve upon respondent

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[78] TSN, October 18, 1999, pp. 2-5.

[79] *Atlantic Erectors, Inc. v. Court of Appeals*, G.R. No. 170732, October 11, 2012, 684 SCRA 55, 65-66.

[80] Exhibit "C", RTC records, p. 159.

[81] *Id.*

because the nature of the business is highly technical.[82] However, the CA held that petitioner should have notified respondent that it (petitioner) would stop construction work until the required building permit was in order.[83]

We disagree with the CA that petitioner was not vigilant enough. The December 13, 1994 letter was, effectively, a reminder from which respondent should have taken its cue. Petitioner stated in the letter that it has already done its part in the filing of the building permit as required in the contract. But due to the unavailability of an ECC and other permits, petitioner informed respondent it is losing precious time. Without a building permit, petitioner cautioned respondent that its works will be limited to those covered by its existing excavation permit, which were excavation and fencing.[84] Despite this reminder, respondent secured an ECC only on February 22, 1995.[85] Respondent should, therefore, bear the effect of the delay caused by the stop work order from the city hall. This is but fair because it failed in its obligation to initiate the building permit application.

Respondent should further bear the effect of the delay because its revision of the building plan contributed to delaying the building permit application.

The building plan, for reasons unclear, had to be revised during the excavation stage.[86] Respondent insists petitioner suggested the idea so the building would be converted from a meat processing plant to a regular office, thus dispensing with the requirement for an ECC.[87] The ECC, however, continued to be required and was eventually secured and submitted for the building permit application. Petitioner claims the revision

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[82] CA Decision, *rollo*, p. 94.

[83] *Id.* at 95.

[84] Exhibit "C", RTC records, p. 159.

[85] CA Decision, *rollo*, p. 95.

[86] TSN, February 8, 1999, p. 11.

[87] TSN, September 27, 1999, pp. 3-5; Exhibit "14-B", RTC records, p. 343.

delayed its work for a month because petitioner had to rely mainly on the verbal instructions of respondent's representatives. Respondent, on the other hand, maintains there was no complete work stoppage. The lack of building plan did not materially hamper the construction because the revision only called for a reorientation of the floor plan. Thus, respondent only gave petitioner an extension of 7 days.

We agree with the CA that the revisions merely involved a reorientation of the project, such that petitioner only had to implement a mirror image of the original plan.[88] Engr. Aliño persuasively testified that there was not much effect in the construction schedule because it was still during the excavation for the foundation. As such, work can be done through the guidance of the project engineer. Respondent also gave petitioner a preliminary sketch to guide it on how to continue.[89]

Arch. Sare corroborated Engr. Aliño's testimony. According to Arch. Sare, the revised building plan is only a mirror image of the original one.[90] Mr. Apoderado, on the other hand, failed to specify how drastically different the revised plan is from the original. During his cross-examination, Mr. Apoderado admitted that "not much" had been changed with the plan.[91] We, therefore, uphold the original grant of an extension of 7 days.

However, the revision of the building plan also affected the building permit application because the building plan was one of its supporting documents.[92] The lack of a building permit affected the work of petitioner in such a way that even though there was no complete work stoppage, the work was done surreptitiously and intermittently. Petitioner was wary of getting caught for working without a permit and be penalized accordingly. We find these concerns of petitioner genuine. As early as

[88] CA Decision, *rollo*, p. 96.

[89] TSN, July 31, 2000, p. 5.

[90] TSN, September 27, 1999, p. 6.

[91] TSN, June 14, 1999, p. 6.

[92] TSN, February 8, 1999, p. 12.

December 3, 1994, petitioner reminded respondent about the revised plan.[93] In its subsequent letter dated December 13, 1994, petitioner stressed that "at present, [its] work permit covers only the excavation and fencing of the work area as authorized by the Municipality of Makati."[94] Petitioner further informed respondent that without the plan and the building permit, its work would be limited to excavation and gravel fill. Respondent gave petitioner the revised building plan only on January 3, 1995.[95] When it was submitted with the building permit application, the city hall officials questioned petitioner anew on the provisions for the parking area. It was finally re-submitted on February 27, 1995,[96] when the stop work order was already in force. Thus, it may be true that even without a building permit, petitioner kept working, albeit discreetly, under respondent's instructions. But it cannot be denied as well that the lack of building permit prevented petitioner from carrying out its work freely and efficiently. The admission of Engr. Delima is telling:

> Q: Do you know for a fact also that the plaintiff in this case as early as December 13, 1994 wrote the defendant a letter, through you, informing the defendant that because of the lack of building permit the [timetable] or construction time will be considerably affected?
>
> A: Yes, sir.
>
> Q: In fact, the construction time was really affected, right?
>
> A: Yes, sir.[97]

As such, it is only fair that respondent bear the consequences of the 31-day stop work order of the city hall because it failed in its duty of securing the building permit. Thus, for the delay

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[93] Exhibit "C", RTC records, p. 159.

[94] *Id.*

[95] Exhibit "15", *id.* at 345.

[96] Exhibit "14-A", *id.* at 344.

[97] TSN, March 13, 2000, p. 10.

in securing the building permit, we find that petitioner is entitled to a total extension of 38 days.

Petitioner is entitled to an extension of 40 days for the change orders and extra works.

The CA gave more credence to the testimony of Engr. Aliño that the change orders and extra works petitioner requested extensions for were mere linear activities that did not affect the construction time. The CA also held that contrary to Section 16 of the Construction Agreement,[98] these change orders and extra works were done without the written mutual agreement of the parties.[99]

However, out of the 34-day extension respondent initially granted petitioner, 14 days were allocated for the construction of shear walls, which was one of the change orders and additional works respondent allegedly requested from petitioner.[100] When petitioner requested for re-evaluation, respondent granted an additional extension of 26 days, which appear to cover for the alleged change orders and extra works.[101] In its Answer with Counterclaim[102] dated October 10, 1997, respondent countered that "[petitioner] should be grateful for the grant of a [60-day]

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[98] Section 16 of the Construction Agreement reads:

> EXTRA WORK OR ALL ALTERATION – Any modification of the scope of work shall be an alteration. Any addition to the scope of work shall be extra work. x x x Alteration or extra work shall be subject to the mutual written agreement between the OWNER and CONTRACTOR. No alteration or extra work to be performed, the consideration [thereof], and its period of completion. The period or completion under this agreement shall be deemed automatically and correspondingly extended pursuant to the provision of paragraph 3 hereof.

Exhibit "1-B", RTC records. p. 154.

[99] CA Decision, *rollo*, pp. 97-98.

[100] *Id.* at 81; TSN, July 31, 2000, pp. 15-16.

[101] CA Decision, *rollo*, p. 99.

[102] RTC records, pp. 20-33.

extension credit because most of [these] change orders/[revisions] consist of linear activities, *i.e.*, they can be performed simultaneously or without interrupting the normal pace of the construction work. In fact, [petitioner] was generously given time extension where credit is not due."[103]

Furthermore, during cross-examination, Engr. Aliño admitted that "[the] extra work, change orders would cover canvassing, procurement, installation and fabrication of materials which would necessitate substantial additional time and money on the part of [petitioner]."[104]

We hold respondent for the above admissions. Notwithstanding the nonconformity with the literal terms of Section 16 of the Construction Agreement, respondent liberally granted extensions for the change orders and extra works. As correctly pointed out by petitioner, "[t]he construction agreement does not nullify the change orders/extra works that were already completed without any written agreement. In fact, Werdenberg had partially paid [therefor] leaving an unpaid balance of only ₱141,944.93."[105] In its Answer with Counterclaim, respondent indeed stated that petitioner is entitled to Php 141,944.93 for the change orders and additional works.[106]

Thus, we hold that petitioner is entitled to a total extension of 40 days for the change orders and extra works.

Finally, we agree with the CA when it held that petitioner is entitled to an extension of 7 days for the work stoppage ordered by respondent to resolve the boundary dispute with another company, Sinclair Paints.[107] The CA cited the testimony of respondent's witness, Ms. Josephine del Val, confirming

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[103] *Id.* at 26-27.

[104] TSN, July 31, 2000, p. 15.

[105] Motion for Reconsideration of Petitioner dated June 18, 2004, CA *rollo*, p. 203.

[106] RTC records, p. 27.

[107] CA Decision, *rollo*, p. 93.

that the work stoppage took 7 days.[108] Petitioner should also be entitled to another extension of 6 days, which respondent granted, to cover the holiday breaks.[109]

All told, the extensions in favor of petitioner can be summed up as follows:

21	days for the excavation works
38	days for the building permit application
40	days for the change orders and extra works
7	days for the boundary dispute
6	days for the holidays
112	days in total

Respondent is entitled to liquidated damages equivalent to 18 days of delay

The liability for liquidated damages is governed by Articles 2226 to 2228 of the Civil Code,[110] where the parties to a contract are allowed to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project.[111]

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[108] *Id.*

[109] Exhibit "6-B", RTC records, p. 323.

[110] Article 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Article 2228. When the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

[111] *Atlantic Erectors, Inc. v. Court of Appeals, supra* note 79 at 64-65.

The Construction Agreement provides that upon failure to complete the work agreed upon within the stipulated time, the contractor agrees to pay the owner Php 43,800.00 for every day of delay.[112] As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation.[113]

We have already ruled that the parties were mutually at fault. Petitioner is entitled to an extension of only 112 days counted from April 7, 1995 or until July 28, 1995. Thus, from July 28, 1995 to August 15, 1995, or a period of 18 days, petitioner had already been in default. Consequently, respondent is entitled to Php 788,400.00 as liquidated damages.

Respondent is entitled to the expenses for the repainting job.

Petitioner wrote respondent a letter of turnover dated August 16, 1995.[114] On August 18, 1995, respondent replied, detailing its comments on the turnover list.[115] A recurring comment was the need to either re-paint or to complete the painting job. Respondent rejected the turnover until such time that petitioner would have "favorably remedied [respondent's] complaints on the defects xxx and generally on workmanship of the building."[116] Petitioner acknowledged these defects in a letter dated October 11, 1995 and informed respondent that it will proceed with repainting.[117] Clearly, the defects in the painting job were covered by the guarantee of petitioner.

The bid proposal[118] of petitioner stipulates the following:

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[112] Construction Agreement, Section 3, RTC records, p. 151.

[113] *Id.*

[114] Exhibit "2", *id.* at 312.

[115] *Id.* at 312-314.

[116] *Id.* at 314.

[117] Exhibit "5", *id.* at 320-321.

[118] Exhibit "19", *id*. at 366-367.

All works shall be under our guarantee for a period of one (1) year. Any defects that may arise due to poor workmanship and inferior quality of material supplied from the date of acceptance and guarantee period shall be repaired and replaced by us without any cost to the Owner.[119]

Section 15 of the Construction Agreement provides in part:

15. GUARANTEE – It is expressly agreed and understood that the CONTRACTOR guarantees the work against all defects of materials and workmanship for a period of (1) one year from the date of issuances [sic] of the letter of acceptance. Any defects discovered during said period shall be made good by the CONTRACTOR at its own expense upon notification in writing by the OWNER. x x x[120]

However, the repainting job still proved deficient. In a letter dated May 31, 1996,[121] respondent informed petitioner that it has taken the initiative to get an outside contractor for the subsisting deficiencies. Respondent subsequently contracted Silver Line Builders for the repainting job in the contract price of Php1,050,000.00.[122] Petitioner should answer for these expenses, pursuant to Article 1167 of the Civil Code:

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

Section 6 of the Construction Agreement also provides, in part, that if the work is found defective in any material respect due to the fault of the contractor, the defects should be removed and replaced and all expenses of satisfactory reconstruction of the replaced materials shall be for its sole account.[123]

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[119] *Id.* at 367.

[120] Exhibit "A", *id.* at 154.

[121] Exhibit "3", *id.* at 315-317.

[122] Exhibit "32", *id.* at 389.

[123] Exhibit "A", *id.* at 152.

Respondent is entitled to a 10% retention fee.

In *H.L. Carlos Construction, Inc. v. Marina Properties Corporation,*[124] we held that in the construction industry, the 10 % retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work—if any—becomes necessary.[125] Section 14 of the Construction Agreement provides the conditions for the release of the 10% retention fee to wit:

> 14. FINAL PAYMENT – Final payment of (10%) Ten percent of the contract price retained shall be made within thirty (30) days from the date of issuance by the OWNER of the letter of acceptance **provided that the CONTRACTOR shall submit to the OWNER a sworn statement showing that all the taxes due from it as a result of the contract and all obligation for materials used and labor employed, have been paid for and that no more outstanding claims for any obligations incurred by the CONTRACTOR as a result of the contract exist**; provided, further, that nothing herein contained shall be construed to waive the rights of the OWNER, which it hereby [reserves], to reject the whole or any portion of the aforesaid works should the same be found to have been constructed in violation of the plans and specifications or any of the conditions or documents of this contract.[126] (Emphasis supplied)

Petitioner has complied with the conditions, which are pre-requisites for the release of the retention fee. Hence, the CA was correct in granting the same to respondent.

WHEREFORE, the petition is **PARTLY GRANTED** and the assailed Resolution MODIFIED. Petitioner is entitled to an award of Php 2,767,290.768 computed as follows:

₱ 4,771,222.59	–	unpaid balance under the Agreement
+ 141,944.93	–	unpaid balance for change orders
Php 4,913,167.52	–	Total amount due to BFC

[124] G.R. No. 147614, January 29, 2004, 421 SCRA 428.

[125] *Id.* at 440.

[126] Exhibit "A", RTC records, pp. 153-154.

Less:	788,400.00	– liquidated damages by BFC
Php	4,124,767.52	
Less:	1,050,000.00	– expenses for repainting job due to Werdenberg
Php	3,074,767.52	– amount due to BFC
Less:	307,476.752	– 10% retention fee by Werdenberg
Php	2,767,290.768	– amount due to BFC

The Amount due BFC shall be with interest of 6% interest per annum from the filing of the complaint until full payment.[127]

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Villarama, Jr., and *Leonen,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179741. December 9, 2015]

HEIRS OF SPOUSES HILARIO MARINAS and BERNARDINA N. MARINAS, *petitioners, vs.* **BERNARDO FRIANEZA, RODRIGO FRIANEZA, ALEJANDRA FRIANEZA, HILARIO VILLENA, SATURNINO VILLENA, FEDERICO FLORES, PEDRO FLORES and MARCELINA RAMOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 27 (PD 27); TRANSFER OF LAND UNDER

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[127] *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456.

[*] Designated as additional Member per Raffle dated November 9, 2015 in lieu of Associate Justice Bienvenido L. Reyes who participated in the proceedings before the Court of Appeals.

PD 27 IS NOT AKIN TO A CONVENTIONAL SALE; CONSENT IS NOT NECESSARY FOR THE VALIDITY OF THE TRANSFER.— Petitioners argue that since the mode of acquisition of the properties involved was through voluntary sale or direct payment scheme, the civil law rules on co-ownership apply. Thus, the sale contracts entered into by Bernardina should only affect her own share and not those of her children. x x x It is settled in *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform* that land transfers mandated under PD 27 are not considered conventional sales under our civil laws. In *Hospicio*, we ruled that a provision in the law prohibiting the **sale** of properties donated to a charitable organization incorporated by the same law did **not** bar the implementation of agrarian reform laws as regards the properties. The Court explained: x x x **The twin process of expropriation of lands under agrarian reform and the payment of just compensation is akin to a forced sale**, x x x **Yet a forced sale is clearly different from the sales described under Book V of the Civil Code which are conventional sales, as it does not arise from the consensual agreement of the vendor and vendee, but by compulsion of law. Still, since law is recognized as one of the sources of obligation, there can be no dispute on the efficacy of a forced sale, so long as it is authorized by law.** Thus, for as long as the property is covered under PD 27, the obligation to transfer ownership of the property arises. Consent of one, some or all of the co-owners to the transfer is immaterial to its validity.

2. **ID.; AGRARIAN LAWS; VOLUNTARY LAND TRANSFER/ DIRECT PAYMENT SCHEME MERELY MODES OF IMPLEMENTATION; IT DOES NOT REMOVE THE PROPERTY FROM THE COVERAGE OF AGRARIAN LAWS.—** Bernardina chose to enter into a *Voluntary Land Transfer/Direct Payment Scheme*. This is allowed under Executive Order No. (EO) 228, which provides for the different modes of payment and compensation for land transfers under PD 27: x x x Section 3. **Compensation shall be paid to the landowners in any of the following modes,** at the option of the landowners: x x x (b) **Direct payment in cash or in kind by the farmer-beneficiaries with the terms to be mutually agreed upon by the beneficiaries and landowners** and subject to the approval of the Department of Agrarian Reform; and x x x. In

fact, similar arrangements also appear in subsequent agrarian reform laws. Bernardina's choice to avail of the direct payment scheme concerns only the manner of payment/mode of compensation and does not affect the compulsory obligation to transfer arising from law. It does not serve to remove the transaction over the property from the coverage of agrarian reform laws.

3. ID.; ID.; RIGHT OF RETENTION; LANDOWNER IS DEEMED TO HAVE WAIVED HER RIGHT TO A RETAINED AREA WHEN SHE ENTERED INTO A VOLUNTARY LAND TRANSFER WITHOUT ANY QUALIFICATION AS TO THE EXERCISE OF HER RIGHT; SUCCESSORS-IN-INTEREST ARE BOUND BY SUCH WAIVER.— It is true that the right of retention is constitutionally guaranteed, subject to reasonable limits prescribed by the legislature. x x x In cases of voluntary transactions involving covered land, a landowner seeking to exercise his right to retain is *presumed* to have already exercised the same, or at the very least, expected to exercise it simultaneous to the transaction. x x x Administrative Order No. 4, Series of 1991 provides: 4. A landowner is deemed to have **waived** his right of retention over a parcel of land by the performance of any of the following acts: x x x **b. Entering into a direct-payment scheme agreement as evidenced by a Deed of Transfer over the subject property**; and x x x In addition, under the 2003 Rules and Procedures Governing Landowner Retention Rights, failure to state an intention to retain *upon offer to sell or application under the voluntary land transfer/direct payment scheme* shall result in a waiver of the right. In this case, Bernardina is deemed to have already waived the right to a retained area when she entered into a voluntary land transfer/ direct payment scheme with respondents over the property, without any qualification as to the exercise of her right of retention. Petitioners, as Bernardina's successors-in-interest, are bound by her waiver.

4. ID.; ID.; PRIOR COMPLETE PAYMENT OF JUST COMPENSATION IS NOT REQUIRED FOR ISSUANCE OF TITLES IN CASES OF VOLUNTARY LAND TRANSFER/ DIRECT PAYMENT SCHEME.— We are aware of the rule requiring full payment of just compensation *prior to* the issuance of an emancipation patent. Such was the consistent pronouncement of this Court in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian*

Reform, *Paris v. Alfeche*, *Coruña v. Cinamin* and *Reyes v. Barrios*, among others. The foregoing cases, however, do not involve voluntary land transactions similar to the arrangement chosen by the parties in this case. For this reason, we find that the rule requiring *prior* complete payment does not find application here. Moreover, under DAR Administrative Order No. 13, Series of 1991, which sets forth the rules governing voluntary land transfers and/or direct payment schemes, "[t]he terms and conditions of [voluntary land transfer/direct payment scheme] should include the **immediate transfer of possession and ownership of the land in favor of the identified beneficiaries**." Thus, title, whether in the form of an Emancipation Patent or a Certificate of Land Ownership Award (CLOA), can be issued upon execution of the agreement between the landowner and the farmer-beneficiary. In fact, DAR Administrative Order No. 2, Series of 1994 provides that one of the grounds for the **cancellation** of registered emancipation patents or CLOAs is "default in the obligation to pay an aggregate of three (3) consecutive amortizations *in case of voluntary land transfer/direct payment scheme, except in cases of fortuitous events and force majeure*." In view of the foregoing, and barring other grounds for invalidity, we find no irregularity in the issuance of respondents' emancipation patents. It was therefore error for the Court of Appeals to have ordered the cancellation of respondents' emancipation patents on such ground.

APPEARANCES OF COUNSEL

Bince Viray Dinos Cera & Peralta IV Law Offices for petitioners.

Raul C. Laluan for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari* assailing the *Decision* dated August 30, 2007[1] rendered by the Court of Appeals in CA-G.R. SP No. 89945. The Court of Appeals

[1] *Ponencia* by Associate Justice Amelita G. Tolentino, with Associate Justices Lucenito N. Tagle and Sixto Marella, Jr., concurring. *Rollo,* pp. 32-42.

reversed the *Decision* dated March 16, 2005[2] issued by the Department of Agrarian Reform Adjudication Board ("DARAB") affirming the dismissal of petitioners' Complaint[3] filed before the Regional Agrarian Reform Adjudicator in Urdaneta, Pangasinan.

The Facts

Deceased Hilario G. Marinas ("Hilario") was the registered owner of a parcel of land located in Nantangalan, Pozorrubio, Pangasinan, with an area of approximately 114,000 square meters and covered by Transfer Certificate of Title (TCT) No. 137203 ("property").[4] He died on August 10, 1977 and was survived by his wife Bernardina and ten (10) children.[5]

On August 28, 1978, Bernardina, with the consent of her children, entered into several Agricultural Leasehold Contracts with respondents Bernardo Frianeza,[6] Rodrigo Frianeza,[7] Hilario Villena,[8] SaturninoVillena,[9] Federico Flores,[10] Pedro Flores,[11] Nestor Ramos,[12] and Emiliano Frianeza[13] covering different portions of the property.[14]

On May 23, 1989, Bernardina and respondents signed a Landowner-Tenant Farmers Deed of Undertaking whereby the

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[2] Docketed as DARAB Case No. 11328. *Id.* at 45-48.

[3] Docketed as DARAB Case No. 01-2018-EP'01. *Id.* at 119-122.

[4] *Rollo*, pp. 72-73.

[5] *Id.* at 119.

[6] *Id.* at 73-74.

[7] *Id.* at 75-76.

[8] *Id.* at 77.

[9] *Id.* at 78.

[10] *Id.* at 79.

[11] *Id.* at 80.

[12] *Id.* at 81.

[13] *Id.* at 82.

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

former, pursuant to Presidential Decree No. 27 ("PD 27"),[15] transferred ownership over portions of the property to respondents.[16] Emancipation Patents (EPs) were issued to the individual respondents on different dates in May 1989 and registered with the Registry of Deeds of Lingayen, Pangasinan on November 29 and December 11, 1989.[17] Bernardina died on October 5, 1990.[18]

On February 12, 2001, or almost twelve years later, petitioners, all heirs of deceased Hilario and Bernardina, filed a Complaint for Nullification of Patent and Other Documents, Reconveyance, Accounting and Damages before the Department of Agrarian Reform (DAR) Regional Adjudication Board in Urdaneta City.[19] In their *Complaint*, petitioners stated that respondents secured the issuance of individual TCTs over different portions of the property,[20] as follows:

NAME	PATENT NO.[21]	DATE OF ISSUE[22]	TCT No.	LOT No.	AREA (SQM)
Bernardo Frianeza	A-345889	May 31, 1989	10253	19	1,224
	A-345866	May 31, 1989	10252	21	672
	A-345881	May 31, 1989	10251	26	18,167
Rodrigo Frianeza	A-345875	May 31, 1989	10248	22	15,644
	A-345859	May 31, 1989	10249	23	553
	A-345857	May 30, 1989	10250	27	875
Alejandra Frianeza	A-345695	May 25, 1989	10265	1	2,530
	A-345694	May 25, 1989	10254	2	315
	A-345863	May 31, 1989	10257	18	26,968

[15] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[16] *Rollo*, pp. 111-113.

[17] *Id.* at 33, 83-110.

[18] *Id.* at 127.

[19] *Id.* at 119-122.

[20] *Id.* at 120.

[21] *Id.* at 83-110.

[22] *Id.*

	A-345865	May 31, 1989	10256	20	843
	A-345876	May 31, 1989	10255	25	1,851
	A-345864	May 31, 1989	10258	28	608
Hilario Villena	A-345693	May 25, 1989	10802	3	7,044
	A-345688	May 26, 1989	10245	7	599
	A-345690	May 25, 1989	10246	8	419
	A-345697	May 25, 1989	10247	9	831
SaturninoVillena	A-345882	May 31, 1989	10244	14	459
	A-345878	May 31, 1989	10241	15	307
	A-345883	May 31, 1989	10243	16	1,712
	A-345888	May 31, 1989	10242	17	2,259
Federico Flores	A-345691	May 25, 1989	10801	5	3,198
	A-345689	May 26, 1989	10261	6	553
Pedro Flores	A-345877	May 31, 1989	10259	12	371
	A-345887	May 31, 1989	10260	13	7,373
Marcelina Ramos	A-345692	May 25, 1989	10803	4	6,029
	A-345696	May 25, 1989	10262	10	518
	A-345858	May 31, 1989	10264	11	10,295
	A-345860	May 31, 1989	10263	24	935

Petitioners claim that respondents' titles were illegal, having been obtained (1) in bad faith and/or (2) without complying with the legal requirements for the transfer and distribution of landholdings to qualified beneficiaries.[23] Thus, petitioners prayed for, among others, the cancellation of the titles issued in favor of respondents and the reconveyance of the corresponding portions.[24]

Bad faith

According to petitioners, upon Hilario's death, they became co-owners of the property with Bernardina, with a participation of one-eleventh (1/11) share per heir. Petitioners claim that respondents knew of their co-ownership over the property. Despite this knowledge, respondents chose to deal exclusively with Bernardina who, as surviving spouse, was entitled only to a 1/11 share in the property. Respondents allegedly took advantage of Bernardina's age and sickness and misrepresented that Bernardina was the landowner of the entire property with

[23] *Rollo*, p. 120.

[24] *Id.* at 121.

the right to convey/transfer title over the same.[25] Thus, even assuming that the transfer made by Bernardina in respondents' favor would be declared valid, it would only be limited to her 1/11 share.[26]

Non-compliance with legal requirements

Petitioners likewise maintain that the subject property was exempted from the coverage of agrarian laws.[27] They nevertheless argue that, even assuming that PD 27 applies, the transactions involving the property were attended by defects and irregularities that further make the resulting transfers to respondents void and ineffective.[28] For example, petitioners claim that respondents obtained their respective titles without first having paid the value of the corresponding portions.[29] Petitioners also allege that they, as co-owners of the property, were never notified of any proceeding for the cancellation of TCT No. 137203, which they say is still valid and subsisting.[30] Furthermore, respondents have allegedly and illegally converted their respective portions for residential purposes, contrary to the intent of agrarian laws.[31]

Instead of filing an Answer, respondents, through the Legal Services Division of the DAR Office in Urdaneta City, filed a *Comment* dated April 11, 2001. Respondents raised the prematurity of the Complaint due to petitioners' failure to exhaust the proper administrative remedies governing the cancellation of registered EPs.[32] They also presented a *Certification* dated

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[25] *Id.* at 128.

[26] *Id.* at 128-129.

[27] *Id.* at 121.

[28] *Id.* at 129.

[29] *Id.*

[30] *Id.*

[31] *Rollo*, p. 130.

[32] *Id.* at 123.

May 2, 2001 issued by Eduardo A. Martinez, Municipal Agrarian Reform Officer ("MARO") in Pozorrubio, Pangasinan, to prove that they have paid the required amortizations in full.[33]

Rulings of the Regional Adjudicator and the DARAB

On August 13, 2001, OIC-Regional Adjudicator Rodolfo A. Caddarao issued a *Decision*[34] dismissing petitioners' Complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaint in the instant case is hereby DISMISSED for lack of cause of action and/or for being premature.
>
> SO ORDERED.[35]

Regional Adjudicator Caddarao found that "the contention of [petitioners] that the subject landholding was sold by their mother to the respondents when she was too ill and incoherent was not proven by any evidence."[36] Quite the reverse, the different documents executed by Bernardina appear to indicate that she entered into the agreements voluntarily, her signatures appearing to be "in order and does not show that the person signing the same cannot do so."[37] He likewise found that respondents have fully paid the amortizations on the landholdings as shown by the Certification issued by MARO Martinez.[38]

Anent the claim of exemption on the ground that the subject property is within petitioners' lawful retention area, Regional Adjudicator Caddarao upheld respondents' defense of prematurity, absent any Order of Exemption issued by the DAR Secretary on the property. He said: "[i]t is only after an issuance

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[33] DAR records, p. 102.

[34] *Rollo*, pp. 49-53.

[35] *Id.* at 53.

[36] *Id.* at 52.

[37] *Id.*

[38] *Rollo,* pp. 52-53.

of an Order of Exemption…may the Board took [*sic*] cognizance of the same and declare the EPs granted thereof as cancelled on such ground."[39]

The DARAB affirmed *in toto* the Regional Adjudicator's ruling in a *Decision* dated March 16, 2005.[40] Aggrieved, petitioners filed a Petition for Review with the Court of Appeals.[41]

Ruling of the Court of Appeals

In its *Decision* dated August 30, 2007,[42] the Court of Appeals reversed the rulings of the administrative agencies.

While ruling that land transfers under PD 27 are not covered by the conventional rules under civil law on sales, the Court of Appeals found that there was no sufficient evidence to show that respondents have actually completed payment of the required amortizations. It thus ordered the cancellation of the emancipation patents issued in favor of respondents. The dispositive portion of the Court of Appeals' *Decision* reads:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The assailed decision of the DARAB is **REVERSED** and **SET ASIDE**. The questioned Emancipation Patents issued to the respondents covering the petitioners' landholding are **NULLIFIED WITHOUT PREJUDICE** to their application for the issuance of new patents after showing compliance with the requirements of the law.
>
> **SO ORDERED.**[43]

The Petition

Petitioners appeal the Court of Appeals' *Decision* and present the following arguments:[44]

(1) The mode of acquisition of the properties involved was through voluntary sale or direct payment scheme, hence,

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[39] *Id.* at 53.

[40] *Id.* at 43-48.

[41] CA *rollo*, pp.14-31.

[42] *Rollo*, pp. 32-42.

[43] *Id.* at 41-42.

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

the rule on co-ownership should have governed such that since the sales were signed only by Bernardina Marinas, it shall affect only her own share and not those of her children;

(2) Due to the violations committed by respondents relative to the issuance of their emancipation patents, they should no longer be qualified to apply for new ones;

(3) There was an illegal conversion of the properties involved; and

(4) The properties fall within petitioners' lawful retention limits.

Ruling of the Court

We deny the Petition for lack of merit.

Transfer of land under PD 27 not akin to a conventional sale under our civil laws; Consent is not necessary for the validity of the transfer

Petitioners argue that since the mode of acquisition of the properties involved was through voluntary sale or direct payment scheme, the civil law rules on co-ownership apply. Thus, the sale contracts entered into by Bernardina should only affect her own share and not those of her children.

Their contention is completely devoid of merit.

It is settled in *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform*[45] that land transfers mandated under PD 27 are not considered conventional sales under our civil laws. In *Hospicio*, we ruled that a provision in the law prohibiting the **sale** of properties donated to a charitable organization incorporated by the same law did **not** bar the implementation of agrarian reform laws as regards the properties.[46] The Court explained:

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[45] G.R. No.140847, September 23, 2005, 470 SCRA 609.

[46] *Id.* at 616.

Generally, sale arises out of a contractual obligation. Thus, it must meet the first essential requisite of every contract that is the presence of consent. Consent implies an act of volition in entering into the agreement. The absence or vitiation of consent renders the sale either void or voidable.

x x x x x x x x x

The twin process of expropriation of lands under agrarian reform and the payment of just compensation is akin to a forced sale, which has been aptly described in common law jurisdictions as "sale made under the process of the court, and in the mode prescribed by law," and "which is not the voluntary act of the owner, such as to satisfy a debt, whether of a mortgage, judgment, tax lien, etc." The term has not been precisely defined in this jurisdiction, but reference to the phrase itself is made in Articles 223, 232, 237 and 243 of the Civil Code, which uniformly exempt the family home "from execution, forced sale, or attachment." **Yet a forced sale is clearly different from the sales described under Book V of the Civil Code which are conventional sales, as it does not arise from the consensual agreement of the vendor and vendee, but by compulsion of law. Still, since law is recognized as one of the sources of obligation, there can be no dispute on the efficacy of a forced sale, so long as it is authorized by law.**[47] (Emphasis and underscoring supplied.)

Thus, for as long as the property is covered under PD 27, the obligation to transfer ownership of the property arises. Consent of one, some or all of the co-owners to the transfer is immaterial to its validity.

Voluntary Land Transfer/Direct Payment scheme merely modes of implementation

Bernardina chose to enter into a *Voluntary Land Transfer/Direct Payment Scheme*. This is allowed under Executive

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[47] *Id.* at 616-618.

Order No. (EO) 228,[48] which provides for the different modes of payment and compensation for land transfers under PD 27:

> Section 1. All qualified farmer beneficiaries are now deemed full owners as of October 21, 1972 of the land they acquired by virtue of Presidential Decree No. 27.
>
> x x x x x x x x x
>
> Section 3. **Compensation shall be paid to the landowners in any of the following modes,** at the option of the landowners:
>
> (a) Bond payment over ten (10) years, with ten percent (10%) of the value of the land payable immediately in cash, and the balance in the form of LBP bonds bearing market rates of interest that are aligned with 90-day treasury bills rates, net of applicable final withholding tax. One-tenth of the face value of the bonds shall mature every year from the date of issuance until the tenth year.
>
> The LBP bonds issued hereunder shall be eligible for the purchase of government assets to be privatized.
>
> (b) **Direct payment in cash or in kind by the farmer-beneficiaries with the terms to be mutually agreed upon by the beneficiaries and landowners** and subject to the approval of the Department of Agrarian Reform; and
>
> (c) Other modes of payment as may be prescribed or approved by the Presidential Agrarian Reform Council. (Emphasis and underscoring supplied.)

In fact, similar arrangements also appear in subsequent agrarian reform laws.[49] Bernardina's choice to avail of the direct payment scheme concerns only the manner of payment/

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[48] Declaring Full Land Ownership to Qualified Farmer Beneficiaries covered by Presidential Decree No. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner.

[49] Executive Order No. 229 (1987), Providng the Mechanism for the Implementation of the Comprehensive Aragrarian Reform Program, provides:

mode of compensation and does not affect the compulsory obligation to transfer arising from law. It does not serve to remove the transaction over the property from the coverage of agrarian reform laws.

On the exercise of petitioners' right of retention

Petitioners claim that the property falls within the seven (7) hectare retention limit given to landowners. They assert that "[t]he property in question has a total land area of more than 14 hectares and the petitioners are all in all ten (10) of them and if they exercise their right of retention, they are entitled to at least 3 hectares each."[50]

It is true that the right of retention is constitutionally guaranteed, subject to reasonable limits prescribed by the legislature.[51] In *Daez v. Court of Appeals*,[52] we said:

Section 8. *Voluntary Land Transfer*.—Landowners whose lands are subject to redistribution under this Order have the option of entering into a **voluntary agreement for direct transfer of their lands to appropriate beneficiaries, under terms and conditions acceptable to both parties** xxx.

Section 9. *Voluntary Offer to Sell*.—The government shall purchase all agricultural lands it deems productive and suitable to farmer cultivation **voluntarily offered for sale** to it at a valuation determined in accordance with Section 6. Such transactions shall be exempt from the payment of capital gains tax and other taxes and fees. (Emphasis and underscoring supplied.)

See also Sections 18 to 21 of Republic Act No. 6657.

[50] *Rollo*, p. 21.

[51] Section 4, Article XIII of the Constitution provides:

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, **subject to such priorities and reasonable retention limits as the Congress may prescribe**, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

[52] G.R. No. 133507, February 17, 2000, 325 SCRA 856.

xxx It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process.[53]

Thus, under PD 27, an affected landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it. Under Republic Act No. (RA) 6657,[54] retention by the landowner is not to exceed five (5) hectares, and three (3) hectares to each child, under certain specified conditions.[55]

As with any other right, this right of retention may be waived by the landowner. In cases of voluntary transactions involving covered land, a landowner seeking to exercise his right to retain is *presumed* to have already exercised the same, or at the

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[53] *Id.* at 863-864.

[54] The Comprehensive Agrarian Reform Law of 1988.

[55] **Section 6.** ***Retention Limits.*** — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares.

Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: Provided, further, That original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead. xxx

very least, expected to exercise it simultaneous to the transaction. DAR Administrative Order No. 11, Series of 1990,[56] provides:

> E. Period Within Which to Exercise the Right of Retention
>
> 1. Under Compulsory Acquisition (CA)
>
> The right of retention and the possibility of award to children, where applicable, must be availed of by the landowner **within a period of sixty (60) days from the date of receipt of Notice of Coverage** from the DAR that his landholding is subject to compulsory acquisition. Failure to respond within the specified period and after due notice would mean that the landowner **waives** his right to choose which area to retain.
>
> 2. Under Voluntary Offer to Sell (VOS)
>
> The right to retention may be exercised **at the time the land is voluntarily offered for sale**. The VOS should indicate the landowner's choice of retained area, which should be not more than five (5) hectares, plus the area/s to be awarded to the qualified children. These areas should be specifically identified and segregated from the portion covered by the VOS.
>
> A landowner who voluntarily offered his retained area for CARP coverage may be allowed to withdraw his offer. (Emphasis supplied.)

Administrative Order No. 4, Series of 1991[57] subsequently issued likewise provides:

> 4. A landowner is deemed to have **waived** his right of retention over a parcel of land by the performance of any of the following acts:
>
> a. Signing of the Landowner-Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) covering the subject property;

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[56] Rules and Procedures Governing the Exercise of Retention Rights by Landowners and Award to Children under Section 6 of RA 6657.

[57] Supplemental Guidelines Governing the Exercise of Retention Rights by Landowners under Presidential Decree No. 27.

> **b. Entering into a direct-payment scheme agreement as evidenced by a Deed of Transfer over the subject property**; and
>
> c. Signing/submission of other documents indicating consent to have the subject property covered, such as the form letter of the Land Bank of the Philippines (LBP) on the disposition of the cash and bond portions of a land transfer claim for payment, and the Deed of Assignment, Warranties and Undertaking executed in favor of the LBP. (Emphasis supplied.)

In addition, under the 2003 Rules and Procedures Governing Landowner Retention Rights, failure to state an intention to retain *upon offer to sell or application under the voluntary land transfer/direct payment scheme* shall result in a waiver of the right.[58]

In this case, Bernardina is deemed to have already waived the right to a retained area when she entered into a voluntary land transfer/direct payment scheme with respondents over the property, without any qualification as to the exercise of her right of retention. Petitioners, as Bernardina's successors-in-interest, are bound by her waiver.

On the issue of illegal conversion

We find it unnecessary to rule on petitioners' claim of illegal conversion at this time. For one, the record is completely bereft of proof to support such contention. More importantly, such claim involves factual questions which cannot be resolved by this Court, as it is not a trier of fact.[59]

The Court of Appeals erred in ordering the cancellation of the emancipation patents issued in respondents' names

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[58] DAR Administrative Order No. 2 (2003), Section 6.2.

[59] *Quitoriano v. DARAB*, G.R. No. 171184, March 4, 2008, 547 SCRA 617, 627.

The Court of Appeals ordered the nullification of the emancipation patents issued to respondents. This, the Court of Appeals said, was without prejudice to their application for the issuance of new patents after showing complete compliance with the requirements for their issuance. It reasoned thus:

> However, although the tenant-farmers are already deemed owners of the land they till, they are still required to pay the cost of the land. In the case at bar, **there is no competent evidence to prove that the respondents have paid the full amortizations for the lots awarded to them.** While the Regional Adjudicator stated in his decision that the respondents have paid the full amortizations as per certification dated May 2, 2001 by the Municipal Agrarian Reform Officer, Eduardo A. Martinez, nothing of such sort could be found from the records. Indeed, findings of facts by administrative bodies are usually accorded with respect and not disturbed by the appellate court, but this applies only if the same is supported by the evidence on record. The petitioners have consistently raised the lack of full payment of their landholdings from the Regional Adjudicator to the DARAB and to this Court, but the respondents never bothered to present proofs of payment after the lapse of considerable length of time. Neither did they dispute the allegation. In the absence of such evidence, it can be presumed that full payment has not been effected by the respondents.
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> x x x x x x x x x
>
> It could be gleaned from PD 266, in relation to PD 27 and the jurisprudence applying the same, **that emancipation patents should be issued only after full payment of the amortizations as determined by law**. Although the respondents have been issued emancipation patents, and as could be inferred from PD 266, such issuance could indicate payment of the full amortization of the land covered thereby, the same could not be relied upon in this case inasmuch as the **petitioners managed to produce receipts of payment issued to some of the respondents clearly showing that they were issued after the date of the questioned emancipation patents. On that score, it could be said that the questioned EPs were issued *sans* complete compliance with the process for the application of PD 27**. Under the prevailing jurisprudence, the respondents may complete payment of the unpaid amortizations under RA 6657, the present Agrarian Reform Law. But until such time that the respondents have shown full payment thereof, they are not entitled to the issuance of emancipation patents.

Accordingly, the EPs already issued to them are hereby cancelled.[60] (Emphasis supplied.)

We find that the Court of Appeals erred in ordering the cancellation of respondents' emancipation patents.

First, and as previously discussed, the law allows for different modes of payment of the value of the land acquired pursuant to PD 27, including voluntary arrangements for direct transfer/payment schemes *under terms and conditions mutually acceptable to both parties*.[61] Under EO 229, these voluntary arrangements are subject to the approval of the DAR for compliance with the guidelines for voluntary transfers. These guidelines are:

Section 8. *Voluntary Land Transfer.*—xxx The general guidelines for voluntary land transfer are:

(a) The beneficiaries are determined by the DAR to be the same individuals who would be eligible to purchase the land in case the government under this Order acquired the land for resale;

(b) The area of land to be transferred is no less than the area which the government, under this Order, would otherwise acquire for resale;

(c) The terms and conditions of the government's standing offer to purchase from the landowner and standing offer to resell to the beneficiaries are fully known and understood by both parties;

(d) The voluntary transfer agreement shall include sanctions for non-compliance by either party and shall be binding and irrevocable for both parties, and shall be duly recorded at and monitored by the DAR.

The records of this case show that Bernardina chose to enter into a Voluntary Land Transfer/Direct Payment Scheme. The

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[60] *Rollo*, pp. 39-41.

[61] Executive Order No. 228, Section 3. See also Executive Order No. 229, Section 8 and Republic Act No. 6657, Section 20.

Landowner-Tenant Farmers Deed of Undertaking executed between the parties on May 23, 1989 also contains the signatures of DAR representatives, implying compliance with the applicable guidelines.[62] This Deed of Undertaking, with its terms and conditions voluntarily agreed upon by the parties, should be held binding upon Bernardina and her successors-in-interest.

Second. There is nothing in the Deed of Undertaking to show that the parties conditioned the issuance of emancipation patents in respondents' favor on the complete payment of the value of their corresponding lots. Thus, the fact that payments were made subsequent to the issuance of the patents does not affect the validity of the patents' issuance.

The Deed's salient portions read:

> 3. **That the LANDOWNER does hereby convey and transfer pursuant to PD 27 to the FARMER-BENEFICIARIES the parcels of land** for and in consideration of the amount indicated opposite their names below:
>
> x x x x x x x x x
>
> 4. That the amount indicated will be paid in cash or its equivalent in kind to the LANDOWNER without any interest;
>
> x x x x x x x x x
>
> 6. That in case the FARMER-BENEFICIARIES opt to pay the LANDOWNER in installment basis, the land value will be increased to ₱10,000 per hectare which will be amortized by the FARMER-BENEFICIARIES for a period of three (3) years only;
>
> 7. That **in case of failure** of the FARMER-BENEFICIARIES **to pay the landholdings awarded to him for a period of three (3) years**, the LANDOWNER has the right to **foreclose** on the property and subsequently award it to other qualified beneficiary within the locality; xxx.[63] (Emphasis supplied.)

We likewise note the consequence provided by the parties for respondents' failure to pay amortizations. Under their agreement,

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[62] *Rollo*, pp. 111-113.

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

failure of the farmer-beneficiary to pay for a period of three (3) years will be cause for the **foreclosure by the landowner** of their corresponding portion.[64] This proviso further supports the view that title over the properties immediately vested upon respondents, without prejudice to Bernardina's right to foreclose on the property in case of default on payment for the stipulated period.

Prior complete payment of just compensation is not required for issuance of titles in cases of Voluntary Land Transfer/Direct Payment Scheme

We are aware of the rule requiring full payment of just compensation *prior to* the issuance of an emancipation patent. Such was the consistent pronouncement of this Court in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[65] *Paris v. Alfeche*,[66] *Coruña v. Cinamin*[67] and *Reyes v. Barrios*,[68] among others. The foregoing cases, however, do not involve voluntary land transactions similar to the arrangement chosen by the parties in this case. For this reason, we find that the rule requiring *prior* complete payment does not find application here.

Moreover, under DAR Administrative Order No. 13, Series of 1991,[69] which sets forth the rules governing voluntary land transfers and/or direct payment schemes, "[t]he terms and conditions of [voluntary land transfer/direct payment scheme] should include the **immediate transfer of possession and ownership of the**

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[64] Paragraph 7 of Deed of Undertaking. *Id*. at 112.

[65] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 390.

[66] G.R. No. 139083, August 30, 2001, 364 SCRA 110, 121.

[67] G.R. No. 154286, February 28, 2006, 483 SCRA 507, 522.

[68] G.R. No. 172841, December 15, 2010, 638 SCRA 541, 555.

[69] Rules and Procedures Governing Voluntary Land Transfer or a Direct Payment Scheme (VLT/DPS) Pursuant to Sections 20 and 21, RA 6657.

land in favor of the identified beneficiaries."[70] Thus, title, whether in the form of an Emancipation Patent or a Certificate of Land Ownership Award (CLOA), can be issued upon execution of the agreement between the landowner and the farmer-beneficiary.

In fact, DAR Administrative Order No. 2, Series of 1994[71] provides that one of the grounds for the **cancellation** of registered emancipation patents or CLOAs is "default in the obligation to pay an aggregate of three (3) consecutive amortizations *in case of voluntary land transfer/direct payment scheme, except in cases of fortuitous events and force majeure*."[72]

In view of the foregoing, and barring other grounds for invalidity, we find no irregularity in the issuance of respondents' emancipation patents. It was therefore error for the Court of patents. It was therefore error for the Court of Appeals to have ordered the cancellation of respondents' emancipation patents on such ground.

WHEREFORE, the Petition is **DENIED**. The *Decision* dated August 30, 2007 rendered by the Court of Appeals in CA-G.R. SP No. 89945 is **REVERSED** and **SET ASIDE.** The Emancipation Patents issued to respondents are declared **VALID.**

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

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[70] *Id.*, paragraph B.1.c reads:

The terms and conditions of VLT/DPS should include the **immediate transfer of possession and ownership** of the land in favor of the identified beneficiaries. In this regard, **Certificates of Land Ownership Awards (CLOAs) shall be issued** to the [agrarian reform beneficiaries] with proper annotations. (Emphasis supplied.)

[71] Rules Governing the Correction and Cancellation of Registered/ Unregistered Emancipation Patents (EPs), and Certificates of Land Ownership Award (CLOAs) due to Unlawful Acts and Omission or Breach of Obligations of Agrarian Reform Beneficiaries (ARBs) and for Other Causes.

[72] DAR Administrative Order No. 2 (1994), paragraph IV.B.6.

FIRST DIVISION

[G.R. No. 188638. December 9, 2015]

PHILIPPINE TRANSMARINE CARRIERS, INC. and NORTHERN MARINE MANAGEMENT, *petitioners, vs.* **JOSELITO A. CRISTINO, deceased and represented by his wife SUSAN B. BERDOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES ARE ACCORDED RESPECT ON APPEAL; EXCEPTIONS.— As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: "1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties,

which, if properly considered, would justify a different conclusion." Clearly, this case falls under one of these exceptions as the findings of the Labor Arbiter differed from those of the NLRC and the Court of Appeals. As such, this Court is justified in resolving the factual questions presented in this petition for review.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; OCCUPATIONAL DISEASES; THE SEAFARER ENJOYS A PRESUMPTION OF COMPENSABILITY FOR UNLISTED ILLNESSES BUT HIS CLAIMS FOR COMPENSATION AND BENEFITS MUST BE SUBSTANTIATED BY SUBSTANTIAL EVIDENCE.— Part and parcel of every employment contract entered into by a seaman is the POEA Contract. It is crafted for the sole purpose of ensuring that the seafarers are not put at a disadvantage in their desire of seeking greater economic benefit abroad. As the employment contract between the petitioners and Cristino was entered into on May 30, 2006, the 2000 version of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels is relevant in this case. More particularly, reference must be made to Section 20-B of the POEA Contract which lists down the obligations of an employer in case the seafarer suffers work-related illness or injury during the term of his contract. x x x Section 32-A of the same Contract names certain occupational diseases and the basic conditions that must be met in order for the resulting disability or death to be compensable. A perusal of said provision would show that malignant melanoma is not one of those expressly identified in the list of occupational diseases. Nevertheless, it can be inferred from Section 20-B(4) that the enumeration in Section 32-A is by no means exclusive. The seafarer even enjoys a presumption of compensability for unlisted illnesses in case of failure of the employer to present adequate evidence to the contrary. x x x Here, the respondent did not just rely on the presumption of work-relation but was able to substantiate the claims for compensation and benefits by substantial evidence. Substantial evidence is that amount of "relevant evidence [which] a reasonable mind might accept as adequate to support a conclusion." It is that degree of proof required to support claims for compensation in labor cases.

3. ID.; ID.; ID.; ID.; FOR ILLNESS TO BE COMPENSABLE, A REASONABLE CONNECTION, AND NOT ABSOLUTE CERTAINTY, BETWEEN THE DANGER OF CONTRACTING THE ILLNESS AND ITS AGGRAVATION RESULTING FROM THE WORKING CONDITIONS IS ENOUGH TO SUSTAIN ITS COMPENSABILITY.— Malignant melanoma is a cancer of the skin. Although genetics, the presence of a preexisting nevus and exposure to certain carcinogens are known contributory factors; abundant epidemiologic studies show that sun exposure remains the major stimulant in the development of malignant melanoma of the skin. This kind of tumor usually grows on the upper back, legs, face, and neck as these body areas are usually exposed to sunlight and clinical warning signs include the growth of a new pigmented lesion. Consistent with the role of sun exposure, available literature reveals that fair-skinned individuals are more prone to melanoma than dark-skinned individuals as the latitude of residence is inversely correlated to ultraviolet rays derived from the sun. In the same vein, there are occupations wherein sun exposure is unavoidable, thereby increasing the worker's susceptibility to this type of cancer. The situation where sun exposure is an occupational necessity particularly holds true in this case when the NLRC and the Court of Appeals took judicial notice that Cristino's work made plausible the contraction of his illness. x x x It has been repeatedly emphasized that for illness to be compensable, the nature of employment need not be the lone reason for the illness suffered by the seafarer. Just a reasonable connection, and not absolute certainty, between the danger of contracting the illness and its aggravation resulting from the working conditions is enough to sustain its compensability. x x x In the instant case, it bears stressing that Cristino was deployed and had loyally worked for the petitioners under several management contracts for a period of 15 years. All this time, Cristino occupied the position of a fitter. Apparently, Cristino's job encompassed a wide range of duties and seemingly dependent on the immediate needs of the vessel wherein deck work appeared to be an integral part thereof. As such, the performance of some tasks naturally entailed inevitable sun exposure which could have caused his getting afflicted with malignant melanoma or, at the very least, added to his worsening health condition.

4. ID.; ID.; ID.; ID.; THE COURT IS NOT PRECLUDED FROM AWARDING DISABILITY BENEFITS ON THE BASIS OF THE MEDICAL OPINION OF THE SEAFARER'S PHYSICIAN;

RATIONALE.— It is indisputable that the parties' physicians both came up with the same diagnosis as to Cristino's illness, that is, carcinoma of melanocytes or malignant melanoma, but issued contrasting medical opinions on the work-relatedness of Cristino's illness. Recalling the February 27, 2007 medical opinion of petitioners' designated physicians wherein they stated that Cristino's illness is not work-related, nowhere in said pronouncement can this Court find support for their outright conclusion. x x x As ratiocinated in *Wallem Maritime Services, Inc. v. NLRC*, the Court discounted the statement made by the company's doctors that a seafarer's illness is not work-related for being self-serving especially when there is reasonable ground to believe that the latter's working conditions contributed in the development of his illness. x x x It is for this very reason that the seafarer is given the freedom of choosing his own doctor and why the Court is not precluded from awarding disability benefits on the basis of the medical opinion of the seafarer's physician. As culled from the records, Cristino's own oncologist was actively involved in his treatment and even performed surgical procedure on him as opposed to the more basic medical management provided by the petitioners' designated physicians which were initially limited to the giving of oral medications and wound dressing. Hence, the Court is persuaded that the medical opinion of Cristino's specialist deserves greater evidentiary weight as the petitioners offered no other convincing proof to substantiate their arguments.

5. **ID.; ID.; ID.; ID.; PERMANENT DISABILITY; IN THE ABSENCE OF ANY DECLARATION BY THE EMPLOYER AFTER THE LAPSE OF THE 240-DAY PERIOD, THERE CAN BE A PRESUMPTION OF PERMANENT DISABILITY RESULTING IN THE ENTITLEMENT OF THE SEAFARER TO COLLECT DISABILITY BENEFITS.—** Having established the compensability of Cristino's illness, the Court now determines the nature of his disability. Crucial in this aspect is an examination of the too frequently cited case of *Vergara v. Hammonia Maritime Services, Inc., et al.* wherein the Court thoroughly explained the interplay of the Labor Code provisions, particularly Articles 191 to 193, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, and Section 20-B(3) of the POEA Contract. In said *ponencia*, the Court simplified the timeline as to when a disability can be considered permanent –

starting off with the duty of the seafarer to submit himself for check-up with the company-designated physician within three days from arrival in the country. Within the 120-day period while the seafarer is undergoing treatment, his disability is classified as temporary total disability and the employer is obliged to pay him a sickness allowance, equivalent to his basic wage, until the company-designated physician either announces the seafarer's fitness for employment or recognizes the level of his permanent disability. This 120-day temporary total disability period may be extended up to a maximum of 240 days in the event that the seafarer needs continuous treatment and in the absence of any declaration made by the employers. During this 240-day period, the employer may concede that the seafarer suffers from a permanent disability. Still, the employer may, at any time, make a declaration that the seafarer is qualified to report back to work based on his medical condition. It would appear that, in the absence of any declaration by the employer, it is only after the lapse of the 240-day period that there can be a presumption of the existence of permanent disability, resulting in the entitlement of the seafarer to collect disability benefits.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The Court is confronted once more with a dispute concerning a seafarer's entitlement to compensation and benefits for illness. The regulation is in the Philippine Overseas Employment Administration (POEA) Standard Employment Contract for Seafarers (Contract).[1]

[1] The 2000 POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels is controlling in this case as the employment contract between the parties was entered into on May 30, 2006.

Assailed in this Petition for Review on *Certiorari*[2] are the Court of Appeals Decision[3] dated February 27, 2009 and its July 10, 2009 Resolution[4] in CA-G.R. SP No. 106430, which affirmed *in toto* the July 28, 2008 Decision[5] and the September 30, 2008 Resolution[6] of the National Labor Relations Commission (NLRC). The NLRC granted the respondent's claim for compensation and benefits for illness, effectively overturning the prior Decision[7] dated November 13, 2007 of the Labor Arbiter.

The Antecedents

Joselito Cristino (Cristino) was a seaman and employed as a Fitter by Philippine Transmarine Carriers, Inc. (PTCI), a manning agency, since 1992.[8] On May 30, 2006, Cristino signed another Contract of Employment with PTCI for its principal Northern Marine Management Ltd. (collectively, petitioners) for the vessel M/V Stena Paris.[9] Pursuant to the nine-month contract, Cristino was required to work for at least 44 hours a week and in return, he was compensated with a monthly US$670.00 basic salary and US$373.00 overtime pay.[10] On top of these, Cristino was entitled to nine days of vacation leave with pay per month and guaranteed overtime (GOT) pay of US$4.38/hour after 85

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[2] *Rollo*, pp. 23-58.

[3] *Id*. at 62-70; penned by Associate Justice Estela M. Perlas-Bernabe, and concurred in by Associate Justices Mario L. Guariña III and Marlene Gonzales-Sison.

[4] *Id*. at 72.

[5] *Id.* at 118-123; penned by Commissioner Gregorio O. Bilog III, and concurred in by Presiding Commissioner Lourdes C. Javier.

[6] *Id*. at 125-126; Commissioner Pablo C. Espiritu, Jr. also signified his concurrence in dismissing the Motion for Reconsideration filed by the petitioners.

[7] *Id.* at 219-224; penned by Labor Arbiter Daisy G. Cauton-Barcelona.

[8] *Id*. at 177; Cristino's Position Paper.

[9] *Id*. at 152.

[10] *Id.*; Terms and Conditions stipulated in the May 30, 2006 Contract of Employment.

hours.[11] After he went through the required Pre-Employment Medical Examination (PEME), Cristino was declared "FIT FOR EMPLOYMENT"[12] by PTCI's designated examining physician, and he boarded the vessel on July 6, 2006.[13]

In October 2006, Cristino spotted a palpable mass growing in his leg. Assuming that it was just a simple inflammation or a benign cyst, Cristino did not have it examined. From then on, Cristino experienced bouts of severe physical discomfort from his leg[14] until such time when he could no longer endure the agonizing pain, causing him to be admitted to a Denmark hospital on January 29, 2007.[15] As the attending surgery consultant suspected an abscess formation, an incision procedure, an abdominal CT scan and an ultrasonography were done on Cristino's femoral region.[16] These detailed radiological examinations and procedure revealed that Cristino was suffering from "[p]oorly differentiated papillary tumour" and "[t]ransitio-cellular carcinoma, obs. pro."[17] Due to the gravity of his illness, Cristino was repatriated to the Philippines on February 7, 2007.[18]

Immediately after his arrival in Manila, Cristino was brought to the Physicians' Diagnostic Services Center Inc. (PDSCI),[19] under the care of petitioners' affiliated physician, Dr. Pedro S. De Guzman (Dr. De Guzman).[20] He initially reported that Cristino

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[11] *Id*.

[12] *Id*. at 192; this fit-for-employment clearance was reflected in the Medical Examination Records of Cristino dated June 19, 2006 issued by PDSCI.

[13] *Id*. at 157. Cristino's passport indicates that he embarked on July 6, 2006, while petitioners' Position Paper states that Cristino boarded the vessel on July 7, 2006; *id*. at 132.

[14] *Supra* note 8 at 179.

[15] *Id*. at 158.

[16] *Id*. at 161.

[17] *Id*. at 162.

[18] *Supra* note 8 at 180.

[19] *Id*.

[20] *Supra* note 3, at 63; *rollo* at 159.

had "Carcinoma (probably [m]etastasis) [s]ubcutaneously in the right anterior, upper femoral region[,]" and ordered oral medications and wound dressing on his right inguinal region.[21] For lack of necessary medical equipment and facility, Cristino had to be referred to Mary Johnston Hospital where he received his first chemotherapy treatment.[22] Cristino was reimbursed by the petitioners for the cost of the single chemotherapy session that totaled ₱90,000.00 and which amount was considered part of his sickness allowance.[23]

In a subsequent report signed by Dr. De Guzman and Dr. Raymund Jay Sugay (Dr. Sugay), another physician at PDSCI, they stated that Cristino had been diagnosed with "carcinoma of unknown origin"; that he had reacted positively to one chemotherapy session; and that his wound already showed signs of healing.[24] In the same report, they declared that Cristino's carcinoma is "not considered work-related" and that a more comprehensive evaluation of Cristino's condition was possible after two more chemotherapy sessions.[25] It was during this time when Cristino was informed by the petitioners that additional treatment would be at his own expense.[26]

Cristino was then compelled to continue his medical treatment with Dr. Jorge G. Ignacio (Dr. Ignacio),[27] a medical oncologist connected with the Philippine General Hospital. As narrated in the June 22, 2007 medical certificate issued by Dr. Ignacio, Cristino had undergone an "excision of primary lesion at the [heel] of the right foot and dissection of right inguinal lymph nodes."[28] The same medical specialist concluded that Cristino's illness was malignant melanoma (a type of skin cancer), of

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[21] *Id.* at 159.

[22] *Supra* note 18.

[23] *Id.* at 184.

[24] *Rollo*, p. 160.

[25] *Id.*

[26] *Supra* note 5 at 119.

[27] *Rollo*, p. 227; Cristino's Memorandum of Appeal.

[28] *Id.* at 167.

which sun exposure is a recognized risk factor, and that the nature of Cristino's work possibly increased the development of his illness.[29]

Pushed by high costs of treatment and supported by Dr. Ignacio's medical pronouncement, Cristino demanded for the payment of his disability benefits and illness allowance, and for the reimbursement of his medical expenses, as provided under the POEA Contract. Petitioners' refusal to give in to Cristino's demands forced him to file a complaint for disability benefits, illness allowance, damages, and attorney's fees before the Labor Arbiter.

In his Position Paper, Cristino laid down all his specific functions as fitter so as to fully establish the causal connection between his work and his illness, to quote:

1. Proficiency in the repair, installation and maintenance of machinery, piping and other steelwork;
2. To be capable of working without the direct supervision of an officer;
3. Operating machine shop equipment and to disassemble, overhaul and reinstall bearings, to repack glands and valves;
4. Effecting piping repairs on deck, for domestic services and in cargo tanks;
5. Maintaining the engine workshop and will keep a written inventory of stores and tools, advising the Second Engineer of any shortage. He will maintain all power tools and record the use of stores;
6. Sounding tanks, void spaces and cofferdams;
7. He is to be qualified to form part of an engine room watch if so assigned within the vessel's safe manning certificate[.][30]

Cristino also cited his additional functions which included the following:

A. Strict observance of all safety regulations;

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[29] *Id*.

[30] *Supra* note 8 at 178-179.

B. Reporting any feature which appears adverse to the safety of operations;

C. Knowledge of the location and use of all fire fighting and life saving equipment;

D. Attending boat and fire drills and other safety training as required by the Master;

E. Maintaining a high standard of hygiene in person and throughout the accommodation and machinery spaces[.]

In case of a Deck Fitter, he is to work under the direction of the Chief Officer.[31]

Cristino contended that a "Job Order" was given to him daily, assigning him to do various tasks ranging from "cleaning and repairing of pipes, ladders, antenna, hose, etc." and "painting of the deck."[32] These assignments necessitated Cristino to work under the scorching heat of the sun mixed with the warm sea breeze which he claimed added to his physical deterioration.[33] Cristino pointed out that for the past 15 years that he had been working for the petitioners, he passed all the comprehensive medical, physical, psychological, and dental examinations required of him, and that it was during his employment with them that signs and symptoms of his illness became apparent.[34]

In the same Position Paper, Cristino claimed that he was already declared as "no longer fit for further sea duties" and as such, he must be paid with the maximum compensation provided for in the Schedule of Disability Allowances found in Section 32 of the POEA Contract.[35]

In their defense, the petitioners extensively argued on the non-compensability of Cristino's illness after taking into account

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[31] *Id.* at 179.

[32] *Id.* at 182.

[33] *Id.*

[34] *Id.* at 181-182.

[35] *Id.* at 184.

the POEA Contract. They reasoned out that Cristino failed to satisfy the three requisites that would justify the award of compensation and benefits, namely: the illness must be work-related; the illness must be incurred while the employment contract is still in force; and the disability is evaluated by the petitioners' designated physician.[36] As further asserted by the petitioners, nothing in Cristino's job description necessitated his working directly under the sun while on board the vessel.[37] According to them, cancer is excluded from the list of occupational diseases enumerated in Section 32-A of the POEA Contract[38] and that the burden rested on Cristino to prove that his cancer was acquired during, and as a result of, his employment.[39] In support of their stance, the petitioners insisted that their physicians were in the best position to gauge if Cristino's illness was really work-related or not.[40]

In a decision[41] dated November 13, 2007, the Labor Arbiter dismissed the complaint, relying heavily on the medical opinion of the petitioners' physicians, Dr. De Guzman and Dr. Sugay, that Cristino's illness was not work-related. In contrast, the Labor Arbiter discounted the medical diagnosis of Dr. Ignacio, labeling it as merely "speculative" for it did not fully establish Cristino's exposure to the ultraviolet rays of the sun nor such exposure was the cause of his illness.[42]

Dissatisfied with the Labor Arbiter's decision, Cristino appealed his case to the NLRC. Unfortunately, Cristino died of cardio-respiratory arrest as a consequence of malignant melanoma[43]

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[36] *Id*. at 136; Petitioners' Position Paper.

[37] *Id*. at 207; Petitioners' Rejoinder.

[38] *Supra* note 36.

[39] *Id*. at 143.

[40] *Id*. at 137.

[41] *Supra* note 7.

[42] *Id*. at 224.

[43] *Rollo*, p. 264; per Death Certificate of Cristino.

during the pendency of his appeal. His widow, Susan B. Berdos (respondent), filed the corresponding Motion for Substitution.[44]

In its July 28, 2008 decision,[45] the NLRC overturned the earlier judgment, and directed the petitioners to pay Cristino' heirs permamenr disability benefits amounting to US$60,000.00, illness allowance amounting to P30,000.00, and attorney's fees equivalent to not more than 10% of the monetray award. The NLRC categorically stated that Cristino's illness was work-related, as adequately substantiated by the medical findings of Dr. Ignacio, as expert in the field of oncology. Citing several decisions of this Court, the NLRC concluded that employment need not be the only consideration in the contraction of illness but it illness but it being a mere contributory factor in its progress, regardless of degree, is sufficient in sustaining its compensability. As Cristino was deterred by his illness from engaging in his customary work for more than 120 days, the NLRC classified his disability as permanent.[46] The motion for Reconsideration subsequently filed by the petitioners was denied by the NLRC in its resolution of September 30, 2008.[47]

The reversal of the earlier judgment prompted the petitioners to elevate their case to the Court of Appeals. All the same, the Court of Appeals affirmed both the decision and the resolution of the NLRC.[48] The Court of Appeals reasoned out that seafarers enjoy a presumption of compensability for illnesses excluded from the enumeration found in Section 32-A of the POEA Contract, and that the petitioners failed to overcome this presumption. The Court of Appeals was convinced that Cristino's illness was work-related based on his assigned tasks.[49] Thus, the Court of Appeals upheld his entitlement to permanent disability

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[44] *Id.* at 261.

[45] *Supra* note 5.

[46] *Id.*

[47] *Supra* note 6.

[48] *Supra* note 3.

[49] *Id.* at 68.

benefits and sickness allowance computed on a 120-day maximum period, pursuant to Section 20-B(3) of the POEA Contract.[50] During the pendency of their Motion for Reconsideration before the Court of Appeals, the petitioners fully settled the judgment award as the Labor Arbiter was about to issue the corresponding writ of execution.[51] Thereafter, the Motion for Reconsideration was denied in the Court of Appeals' resolution[52] dated July 10, 2009.

The Issues

Hence, the present petition for review anchored on the following arguments:

1. The Honorable Court of Appeals committed reversible error in ruling that [p]etitioners failed to prove through substantial evidence that [r]espondent's skin cancer was not work-related.
2. The Honorable Court of Appeals committed reversible error in ruling that a seafarer unable to work for more than 120 days is deemed permanently and totally disabled and entitled to maximum disability benefits under the POEA Contract.
3. The Honorable Court of Appeals committed reversible error in affirming the award of sickness allowance to [r]espondent.
4. The Honorable Court of Appeals committed reversible error in affirming the award of attorney's fees.
5. The Honorable Court of Appeals committed reversible error in not commanding [r]espondent's wife Susan Berdos to return the sum paid to her by [p]etitioners.[53]

In a nutshell, the core issue to be resolved is whether the Court of Appeals is correct in finding Cristino's illness as work-related and, therefore, compensable, pursuant to the POEA Contract.

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[50] *Id*. at 69.

[51] *Rollo*, p. 391; Petitioners' Motion to Amend Prayer in the Petition.

[52] *Supra* note 4.

[53] *Supra* note 2, at 31-32.

The Court's Ruling

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[54] are reviewable by this Court.[55] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[56] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;

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[54] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[55] *Heirs of Pacencia Racaza v. Abay-Abay*, G.R. No. 198402, June 13, 2012, 672 SCRA 622, 627.

[56] *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.,* 620 Phil. 505, 512 (2009).

9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[57]

Clearly, this case falls under one of these exceptions as the findings of the Labor Arbiter differed from those of the NLRC and the Court of Appeals. As such, this Court is justified in resolving the factual questions presented in this petition for review.

Anent the substantive issues raised, the petition is devoid of merit.

Part and parcel of every employment contract entered into by a seaman is the POEA Contract. It is crafted for the sole purpose of ensuring that the seafarers are not put at a disadvantage in their desire of seeking greater economic benefit abroad. As the employment contract between the petitioners and Cristino was entered into on May 30, 2006,[58] the 2000 version of the POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels is relevant in this case.

More particularly, reference must be made to Section 20-B of the POEA Contract which lists down the obligations of an employer in case the seafarer suffers work-related illness or injury during the term of his contract. The provision reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

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[57] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 459-460.

[58] *Supra* note 9.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation

in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[59]

Section 32-A of the same Contract names certain occupational diseases and the basic conditions that must be met in order for the resulting disability or death to be compensable. A perusal of said provision would show that malignant melanoma is not one of those expressly identified in the list of occupational diseases. Nevertheless, it can be inferred from Section 20-B(4) that the enumeration in Section 32-A is by no means exclusive. The seafarer even enjoys a presumption of compensability for unlisted illnesses in case of failure of the employer to present adequate evidence to the contrary. As no third doctor, whose assessment was supposed to be final, had been jointly appointed by the petitioners and the respondent as provided in Section 20-B(3), there is no other recourse for the Court but to reexamine the merits of the medical evaluations respectively presented by the parties' doctors[60] vis-à-vis Cristino's work and his illness.

Here, the respondent did not just rely on the presumption of work-relation but was able to substantiate the claims for compensation and benefits by substantial evidence. Substantial evidence is that amount of "relevant evidence [which] a reasonable mind might accept as adequate to support a conclusion."[61] It is

[59] *Supra* note 1.

[60] *Ison v. Crewserve, Inc.*, G.R. No. 173951, April 16, 2012, 669 SCRA 481, 494.

[61] *Office of the Ombudsman (Visayas) v. Zaldarriaga*, 635 Phil. 361, 368 (2010).

that degree of proof required to support claims for compensation in labor cases.[62]

Malignant melanoma is a cancer of the skin.[63] Although genetics, the presence of a preexisting nevus and exposure to certain carcinogens are known contributory factors; abundant epidemiologic studies show that sun exposure remains the major stimulant in the development of malignant melanoma of the skin.[64] This kind of tumor usually grows on the upper back, legs, face, and neck as these body areas are usually exposed to sunlight[65] and clinical warning signs include the growth of a new pigmented lesion.[66] Consistent with the role of sun exposure, available literature reveals that fair-skinned individuals are more prone to melanoma than dark-skinned individuals as the latitude of residence is inversely correlated to ultraviolet rays derived from the sun.[67] In the same vein, there are occupations wherein sun exposure is unavoidable, thereby increasing the worker's susceptibility to this type of cancer.

The situation where sun exposure is an occupational necessity particularly holds true in this case when the NLRC and the Court of Appeals took judicial notice that Cristino's work made plausible the contraction of his illness. As aptly concluded by the Court of Appeals:

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[62] *Cootauco v. MMS Phil. Maritime Services, Inc., et al.*, 629 Phil. 506, 521 (2010).

[63] Anthony S. Fauci, M.D., Eugene Braunwald, M.D., Dennis L. Kasper, M.D., Stephen L. Hauser, M.D., Dan L. Longo, M.D., J. Larry Jameson, M.D., PhD, and Joseph Loscalzo, M.D., PhD, *Harrison's Principles of Internal Medicine* (New York: McGraw-Hill Companies, Inc., 2008), p. 541.

[64] Ramzi S. Cotran, M.D., Vinay Kumar, M.D., F.R.C. Path., and Tucker Collins, M.D., Ph.D., *Robbins Pathologic Basis of Disease* (Philadelphia: W.B. Saunders Company, 1999), p. 1177.

[65] *Id.*

[66] *Id.* at 1178.

[67] *Supra* note 62 at 542.

x x x. It is well to point out that among private respondent's daily tasks as a fitter is to clean and repair among others, pipes, ladders, antenna, hose and to paint the deck, for which exposure to sunlight could not be avoided. Hence, the nature of his work may have caused or at least contributed to his illness.[68]

It has been repeatedly emphasized that for illness to be compensable, the nature of employment need not be the lone reason for the illness suffered by the seafarer.[69] Just a reasonable connection, and not absolute certainty, between the danger of contracting the illness and its aggravation resulting from the working conditions is enough to sustain its compensability.[70] In the words of the Court:

x x x. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease xxx.[71]

The Court went on to say that:

It is indeed safe to presume that, at the very least, the nature of Faustino Inductivo's employment had contributed to the aggravation of his illness – if indeed it was pre-existing at the time of his employment – and therefore it is but just that he be duly compensated for it.[72]

In the instant case, it bears stressing that Cristino was deployed and had loyally worked for the petitioners under several management contracts for a period of 15 years.[73] All this time,

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[68] *Supra* note 3 at 68.

[69] *Magsaysay Maritime Services v. Laurel,* G.R. No. 195518, March 20, 2013, 694 SCRA 225, 242.

[70] *Wallem Maritime Services, Inc. v. NLRC*, G.R. No. 130772, November 19, 1999, 318 SCRA 623, 632.

[71] *Id*.

[72] *Id*.

[73] *Id*. at 189-190; based on the Certificate of Sea Service dated March 20, 2007 issued by Philippine Transmarine Carriers, Inc.

Cristino occupied the position of a fitter. Apparently, Cristino's job encompassed a wide range of duties and seemingly dependent on the immediate needs of the vessel wherein deck work appeared to be an integral part thereof. As such, the performance of some tasks naturally entailed inevitable sun exposure which could have caused his getting afflicted with malignant melanoma or, at the very least, added to his worsening health condition.

Fittingly, the Court of Appeals and the NLRC correctly appreciated these circumstances in finding reasonable causal relation between Cristino's illness and his work in the same way that the Court took into account the working conditions of a seafarer in *Nisda v. Sea Serve Maritime Agency, et al.*[74] when it decided in favor of the seafarer's entitlement to disability benefits.

It is indisputable that the parties' physicians both came up with the same diagnosis as to Cristino's illness, that is, carcinoma of melanocytes or malignant melanoma, but issued contrasting medical opinions on the work-relatedness of Cristino's illness.[75] Recalling the February 27, 2007 medical opinion of petitioners' designated physicians wherein they stated that Cristino's illness is not work-related,[76] nowhere in said pronouncement can this Court find support for their outright conclusion. It was a simple one-liner negation effectively cutting off Cristino's entitlement to disability benefits and sandwiched by paragraphs containing a narration of the medical care given to Cristino at Mary Johnston Hospital by other doctors and the recommended treatments.

As ratiocinated in *Wallem Maritime Services, Inc. v. NLRC*,[77] the Court discounted the statement made by the company's doctors that a seafarer's illness is not work-related for being self-serving especially when there is reasonable ground to believe that the latter's working conditions contributed in the development of his illness.

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[74] 611 Phil. 291 (2009).

[75] *Supra* notes 24 and 28.

[76] *Supra* note 25.

[77] *Supra* note 69.

HFS Philippines, Inc., et al. v. Pilar[78] had the same observation, where the Court ruled:

> The bottomline is this: the certification of the company-designated physician would defeat respondent's claim while the opinion of the independent physicians would uphold such claim. In such a situation, we adopt the findings favorable to respondent.[79]

It is for this very reason that the seafarer is given the freedom of choosing his own doctor[80] and why the Court is not precluded from awarding disability benefits on the basis of the medical opinion of the seafarer's physician.[81]

As culled from the records, Cristino's own oncologist was actively involved in his treatment and even performed surgical procedure on him as opposed to the more basic medical management provided by the petitioners' designated physicians which were initially limited to the giving of oral medications and wound dressing.

Hence, the Court is persuaded that the medical opinion of Cristino's specialist deserves greater evidentiary weight as the petitioners offered no other convincing proof to substantiate their arguments.

Having established the compensability of Cristino's illness, the Court now determines the nature of his disability. Crucial in this aspect is an examination of the too frequently cited case of *Vergara v. Hammonia Maritime Services, Inc., et al.*[82] wherein the Court thoroughly explained the interplay of the Labor Code provisions, particularly Articles 191 to

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[78] 603 Phil. 309 (2009).

[79] *Id.* at 320.

[80] *Abante v. KJGS Fleet Management Manila and/or Guy Domingo A. Macapayag, et al.,* 622 Phil. 761, 769 (2009).

[81] *Nazareno v. Maersk Filipinas Crewing, Inc.,* G.R. No. 168703, February 26, 2013, 691 SCRA 630.

[82] 588 Phil. 895 (2008).

193,[83] Rule X of the Rules and Regulations Implementing Book IV of the Labor Code,[84] and Section 20-B(3) of the POEA Contract.[85]

In said *ponencia*, the Court simplified the timeline as to when a disability can be considered permanent – starting off with the duty of the seafarer to submit himself for check-up with the company-designated physician within three days from arrival in the country.[86] Within the 120-day period while the

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[83] Article 192(c)(1) of the Labor Code is relevant in this case, which reads:

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

(1) Temporary total disability lasting continously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

[84] Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code provides:

Sec. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

[85] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

[86] *Vergara v. Hammonia Maritime Services, Inc., et al., supra* note 82, at 912.

seafarer is undergoing treatment, his disability is classified as temporary total disability and the employer is obliged to pay him a sickness allowance, equivalent to his basic wage, until the company-designated physician either announces the seafarer's fitness for employment or recognizes the level of his permanent disability. This 120-day temporary total disability period may be extended up to a maximum of 240 days in the event that the seafarer needs continuous treatment and in the absence of any declaration made by the employers. During this 240-day period, the employer may concede that the seafarer suffers from a permanent disability. Still, the employer may, at any time, make a declaration that the seafarer is qualified to report back to work based on his medical condition.[87] It would appear that, in the absence of any declaration by the employer, it is only after the lapse of the 240-day period that there can be a presumption of the existence of permanent disability,[88] resulting in the entitlement of the seafarer to collect disability benefits.

In *C.F. Sharp Crew Management, Inc. v. Taok*,[89] the Court categorically stated that the seafarer may institute an action for total and permanent disability benefits in any of the following circumstances:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
(b) 240 days had lapsed without any certification being issued by the company-designated physician;
(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he

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[87] *Id*.
[88] *Id*. at 913.
[89] G.R. No. 193679, July 18, 2012, 677 SCRA 296, 315.

consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.[90]

Guided by the above-cited Court ruling, it can be deduced that Cristino already had a cause of action when he commenced the suit for permanent disability benefits against the petitioners on May 15, 2007, which was well within the 120-day period reckoned from the time he had his post-employment medical examination with the petitioners' designated physician. For one, Cristino was previously declared unfit for sea service.[91] Second, even without this express declaration, the petitioners are deemed to have acknowledged the permanent disability of Cristino when they stopped paying his sickness allowance way before the expiration of the 120-day period.[92] Third, the petitioners' physicians intimated in their medical opinion the seriousness of treatments Cristino was scheduled to receive, thus, reflecting their conviction of Cristino's inability to carry out his customary work.

In *Bejerano v. Employees' Compensation Commission*,[93] the Court defined permanent total disability as "disablement of an employee to earn wages in the same kind of work, or work of a similar nature that she was trained for or accustomed to perform, or any kind of work which a person of her mentality and attainment could do. It does not mean state of absolute helplessness, but

[90] *Id*. at 315.
[91] *Rollo,* p. 184.
[92] *Supra* note 36 at 133.
[93] G.R. No. 84777, January 30, 1992, 205 SCRA 598.

inability to do substantially all material acts necessary [for] prosecution of an occupation for remuneration or profit in substantially customary and usual manner."[94] It is unquestionable that Cristino was not able to resume his job as fitter until his demise on March 25, 2008.[95]

In light of the foregoing discussions, the Court affirms the compensability of Cristino's permanent disability. The US$60,000.00 (the equivalent of 120% of US$50,000.00) disability allowance is justified under Section 32 of the POEA Contract as Cristino suffered from permanent total disability. Considering that Cristino previously received ₱90,000.00 as illness allowance out of the ₱120,600.00[96] (representing his 120 days basic salary computed at the prevailing exchange rate at the time of payment), the respondent rightfully received the remaining balance of ₱30,600.00. The grant of attorney's fees is likewise upheld pursuant to Article 2208 of the Civil Code. The respondent was forced to continuously litigate and incurred expenses to protect her interests even after suffering the agony of losing her husband.

In sum, the Court finds no compelling reason to deviate from the conclusions drawn by the NLRC and the Court of Appeals. This is another event where the Court must tilt the scale of justice in the seafarer's favor because only then can the true intent and purpose of the POEA Contract, the Labor Code provisions and its Implementing Rules and Regulations be given effect.

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

SO ORDERED.

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

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[94] *Id*. at 601-602.

[95] *Supra* note 43. In the respondent's Motion for Substitution dated April 21, 2008, it was indicated that Cristino died on March 27, 2008.

[96] *Supra* note 8 at 184.

[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Raffle dated June 8, 2015.

THIRD DIVISION

[G.R. No. 190482. December 9, 2015]

DEPARTMENT OF AGRARIAN REFORM, represented by MS. FRITZI C. PANTOJA in her capacity as Provincial Agrarian Reform Officer of Laguna, *petitioner, vs.* **IGMIDIO D. ROBLES, RANDY V. ROBLES, MARY KRIST B. MALIMBAN, ANNE JAMAICA G. ROBLES, JOHN CARLO S. ROBLES and CHRISTINE ANN V. ROBLES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; HAS JURISDICTION OVER AGRARIAN DISPUTES WHERE TENANCY RELATIONSHIP EXISTS BETWEEN THE PARTIES AND OTHER AGRARIAN REFORM MATTERS.— In order to determine x x x which among the DARAB and the Office of the Secretary of DAR, and the SACs has jurisdiction over the nature and subject matter of the petition for annulment of the deeds of sale executed by Eduardo in favor of respondents and the cancellation of the TCTs issued to them, it is necessary to examine the x x x allegations therein and the character of the relief sought, irrespective whether the petitioner is entitled thereto x x x. Although no tenancy or agrarian relationship between the parties can be gleaned from the allegations of the petition in order to be considered an agrarian dispute within the DARAB's jurisdiction, the Court notes that the petition is anchored on the absence of a clearance for the sale and registration of the subject agricultural lands in favor of respondents, as required by DAR Administrative Order No. 1, series of 1989 *(A.O. No. 01-89)* or the Rules and Procedures Governing Land Transaction. Clearly, such petition involves the matter of implementation of agrarian laws which is, as a general rule, within the primary jurisdiction of the DAR Regional Director. It bears stressing that while the rule is that DARAB's jurisdiction is limited to agrarian disputes where tenancy relationship between the parties exists, Section 50 of R.A. No.

6657 and Section 17 of E.O. No. 229 both plainly state that the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters. It is also noteworthy that while Section 3(d) of R.A. No. 6657 defined the term "agrarian dispute," no specific definition was given by the same law to the term "agrarian reform matters." In view thereof, the Court cannot restrict the DARAB's quasi-judicial jurisdiction only to those involving agrarian disputes where tenancy relationship exists between the parties, for it should also include other "agrarian reform matters" which do not fall under the exclusive jurisdiction of the Office of the Secretary of DAR, the Department of Agriculture and the Department of Environment and Natural Resources, as well as the Special Agrarian Courts. Although they are not deemed as "agrarian disputes" falling under the DARAB's jurisdiction, "[s]uch other agrarian cases, disputes, matters or concerns" referred to the Adjudicator by the Secretary of the DAR pursuant to Section 1 (1.13), Rule II of the 2003 DARAB Rules of Procedure, are still considered as "agrarian reform matters." A case in point is the DAR's petition for annulment of deeds of sale and annulment of titles executed in violation of the provision Section 6, par. 4 of RA 6657. Despite being an agrarian law implementation case, the Secretary of the DAR expressly referred jurisdiction over such petition to the Provincial Adjudicator of the DARAB through Memorandum Circular (M.C.) No. 02-01 on the Guidelines on Annulment of Deeds of Conveyance of Lands Covered by the Comprehensive Agrarian Reform Program (CARP) Executed in Violation of Section 6, Paragraph 4 of Republic Act (RA) No. 6657. x x x In light of the principle that jurisdiction over the subject matter and nature of the petition is conferred by law and determined by the material allegations therein, and is not affected by the defenses or theories set up in the respondent's answer or motion to dismiss, the Court finds that the DAR's petition for annulment of deeds of sale and cancellation of titles falls under the jurisdiction of the PARAD under Section 1 (1.5), Rule II of the 2003 DARAB Rules of Procedure, as it contains sufficient allegations to the effect it involves sales of agricultural lands under the coverage of the CARL.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM PROGRAM; ACQUISITION OF LANDS; NOTICE OF COVERAGE; DESIGNED TO COMPLY WITH THE REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS.— [T]he Court does not

undermine the significance of the notice of coverage for purposes of acquisition of lands under the CARP. A letter informing a landowner that his/her land is covered by CARP, and is subject to acquisition and distribution to beneficiaries, and that he/she has rights under the law, including the right to retain 5 hectares, the notice of coverage first sprung from DAR A.O. No. 12, Series of 1989, to fill in the gap under Section 16 of the CARL on the identification process of lands subject to compulsory acquisition. In *Roxas & Co., Inc. v. Court of Appeals,* the Court stressed the importance of such notice as a step designed to comply with the requirements of administrative due process x x x.

3. **CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; THE PROVISION ON RETENTION LIMITS CONSTITUTES AS STATUTORY LIENS WHICH SUBSIST AND BIND THE WHOLE WORLD EVEN WITHOUT THE BENEFIT OF REGISTRATION.—** Section 39 of Act No. 496 and Section 44 of P.D. No. 1529 similarly provide for statutory liens which subsist and bind the whole world, even without the benefit of registration under the Torrens System x x x. The Court is of the view that the provision on retention limits under Section 6 of RA 6657 constitutes as statutory liens on Eduardo's titles, which were carried over to respondents' derivative titles, even if no such annotations were inscribed on all of the said titles. In particular, such statutory liens pertain to paragraph 4 of Section 6 of RA 6657 in relation to Section 73 of the same law x x x. As Eduardo's titles contain such statutory liens, respondents have imputed knowledge that the transfer of the subject properties in excess of the landowner's 5-hectare (50,000 sq. m.) retention limit under the CARL could have been illegal as it appears to circumvent the coverage of CARP. Thus, until the PARAD has decided with finality the DAR's petition for annulment of deeds of sale and cancellation of titles for alleged violation of Section 6, paragraph 4 of RA 6657, respondents cannot claim that they are innocent purchasers for value and in good faith.

4. **ID.; ID.; ID.; INDEFEASIBILITY OF TITLE; WHAT CANNOT BE COLLATERALLY ATTACKED IS THE CERTIFICATE OF TITLE, AND NOT THE TITLE ITSELF.—** There is also no merit in respondents' contention that the TCTs issued in their favor have become incontrovertible and indefeasible, and can no longer be altered, canceled or modified or subject to any collateral attack after the expiration of one (1) year from the date of entry

of the decree of registration, pursuant to Section 32 of P.D. No. 1529. In *Heirs of Clemente Ermac v. Heirs of Vicente Ermac,* the Court clarified the x x x principle x x x. In *Lacbayan v. Samoy, Jr.,* the Court noted that what cannot be collaterally attacked is the certificate of title, and not the title itself x x x. In this case, what is being assailed in the DAR's petition for annulment of deeds of sale and cancellation of titles is the legality of the transfer of title over the subject properties in favor of respondents, and not their corresponding TCTs, due to the absence of DAR clearance and for possible violation of Section 6, paragraph 4 of R.A. No. 6657.

APPEARANCES OF COUNSEL

Rexie M. Maristela and *Ma. Criselda D. Ilagan* for petitioner.

Abner O. Antazo for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (*CA*) Decision[1] dated May 29, 2009 and its Resolution[2] dated December 2, 2009 in CA-G.R. SP No. 104896.

The facts are as follows:

During his lifetime, Eduardo Reyes, married to Nenita P. Reyes, was the registered owner of certain properties located at Barangay Ambiling, Magdalena, Laguna, covered by Transfer Certificate of Title (*TCT*) Nos. T-85055 and T-116506, with areas of about 195,366 and 7,431 square meters (*sq. m.*), respectively. He later caused the subdivision of the land covered by TCT No. T-85055 into five (5) lots.

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Mariflor P. Punzalan Castillo and Marlene Gonzales-Sison, concurring. CA *rollo*, pp. 48-59.

[2] *Id*. at 67-69.

On April 17, 1997, Eduardo sold the said properties to respondents, as follows:

1. Igmidio D. Robles – Lot 6-B-1 of TCT No. T-85055, 38,829 sq. m.;
2. Randy V. Robles – Lot 6-B-2 of TCT No. T-85055, 39,896 sq. m.;
3. Mary Krist B. Malimban – Lot No 6-B-3 of TCT No. T-85055, 38,904 sq. m.;
4. Anne Jamaca G. Robles – Lot No. 6-B-4 of TCT No. T-85055, 38,595 sq. m.;
5. John Carlo S. Robles – Lot No. 6-B-5 of TCT No. T-85055, 39,142 sq. m.; and
6. Christine Anne V. Robles – Lot No. 3-1-2-C-2-G-3 of TCT No. T-116506, 7,431 sq. m.

On May 3, 2005, the deeds of absolute sale covering the properties were duly registered with the Registry of Deeds for the Province of Laguna in the names of respondents under the following TCT Nos.:

1. Igmidio D. Robles – TCT No. T-238504;
2. Randy V. Robles – TCT No. T-238305;
3. Mary Krist B. Malimban – TCT No. T-238506;
4. Anne Jamaca G. Robles – TCT No. T-238507;
5. John Carlo S. Robles – TCT No. T-238503; and
6. Christine Anne V. Robles – TCT No. 238502.

On May 26, 2006, petitioner Department of Agrarian Reform (*DAR*) Region IV-A Laguna Provincial Office, represented by Fritzi C. Pantoja in her capacity as Provincial Agrarian Reform Officer II (*PARO*), filed Petition for Annulment of Deeds of Absolute Sale and Cancellation of Transfer Certificates of Title Nos. T-238502, T-238503, T-238504, T-238505, T-238506 and T-238507. It alleged that the deeds of absolute sale were executed by Eduardo without prior DAR clearance under Administrative Order No. 01-89, series of 1989,[3] in violation of Section 6,

[3] Rules of Procedure Governing Land Transactions.

paragraph 4[4] of Republic Act (*R.A.*) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended (*CARL*).

On September 9, 2006, respondents received a Summons and Notice of Hearing, together with a copy of the said petition from the Office of the Provincial Adjudicator, Department of Agrarian Reform Adjudication Board (DARAB), Region IV, requiring them to answer the petition and appear for the initial preliminary conference set on October 10, 2006. Thus, they filed their Answer and Supplemental Answer to the petition.

On October 10 and 23, 2006, Julieta R. Gonzales and Nenita Reyes, the surviving spouse and the daughter of Eduardo, respectively, filed a motion to dismiss on the ground that the DARAB has no jurisdiction over the nature of the action and

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[4] Section 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: provided, that landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: provided, further, that original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

x x x x x x x x x

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: provided, however, that those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares. (Emphasis added)

the subject matter of the case, and that the DAR has no cause of action against them.

On November 2, 2006, respondents filed a Manifestation adopting the motion to dismiss filed by Julieta and Nenita.

On November 30, 2006, the DARAB Provincial Adjudicator issued a Resolution denying the motion to dismiss for lack of merit.

Julieta and Nenita filed a motion for reconsideration.

At the hearing on January 24, 2008, respondents, through counsel, manifested that they are joining the motion for reconsideration filed by Julieta and Nenita.

On February 7, 2008, the Provincial Adjudicator issued another Resolution dismissing the case against Julieta and Nenita for lack of cause of action, but not against respondents.

Respondents then filed their motion to reconsider the Resolution dated February 7, 2008 and to defer the preliminary conference set on March 13, 2008.

On June 26, 2008, the Provincial Adjudicator issued a Resolution denying respondents' motion for reconsideration, and setting the preliminary conference anew on August 28, 2008.

Aggrieved by the Provincial Adjudicator's Resolutions, respondents filed with the CA a petition for review under Rule 43 of the Rules of Court.

On May 29, 2009, the CA rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the instant petition is **GRANTED**. The three (3) questioned Resolutions of the PARAD dated 30 November 2006, 7 February 2008 and 26 June 2008 are all **REVERSED AND SET ASIDE**. The DAR's petition before the PARAD is hereby **DISMISSED** for lack of jurisdiction.
>
> SO ORDERED.[5]

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[5] *Rollo*, p. 58. (Emphasis ours)

In dismissing the DAR's petition for annulment of deeds of sale and cancellation of titles before the PARAD for lack of jurisdiction, the CA held:

In this case before us, the DAR's petition before the PARAD sought to annul the deeds of absolute sale as well as the subsequently issued torrens titles. Surprisingly, however, the said petition was not brought for or on behalf of any purported tenants, farmworkers or some other beneficiaries under RA 6657. While the said petition claimed, without any supporting documents/evidence however, that DAR was in the process of generating CLOAs for the said landholding, it did subsequently admit that the same petition does not seek to place the subject land "immediately under CARP" but rather to annul the conveyance of the original owner in favor of the petitioners since this was allegedly in violation of RA 6657. Without any averment of some tenurial arrangement/relationship between the original owner and some definite leaseholder, tenant or CARL beneficiary plus the admission that the land has not yet been placed under CARP, neither DARAB nor its adjudicators would have jurisdiction over a simple case of annulment of sale and cancellation of title. Considering that the subject landholding were sold to petitioners way before any *notice of coverage* was ever issued and torrens titles have subsequently been issued in their favor, it is the regular courts who should determine if indeed there were certain violations of the law which would justify annulment of the sales and cancellation of the titles.

Still on the said *notice of coverage,* a review of the pertinent documents reveals that the same was not issued to the present owners but to the heirs of the late Eduardo Reyes. Thus, not only was the notice of coverage belatedly issued to the wrong person/s for the said heirs to whom the notice of coverage was issued were in fact dismissed from the original petition before the PARAD. Next, DAR argues that a notice of coverage need not be issued to the present owners/petitioners otherwise it would validate or recognize the purported irregular or illegal transfer or conveyance. We find it foolhardy for DAR to argue this way when the very fact of issuance of the *notice of coverage* was one of its main anchors in its petition for annulment and cancellation of title before the PARAD.

DAR also cites Section 4 of RA 6657 which refers to the scope of CARL. While the scope under the said provision is quite encompassing, the same will not automatically include every agricultural land. In *Dandoy v. Tongson,* the High Tribunal was explicit,

> "(T)he fact that Lot No. 294 is an agricultural land does not ipso facto make it an agrarian dispute within the jurisdiction of the DARAB. For the present case to fall within the DARAB jurisdiction, there must exist a tenancy relationship between the parties. An allegation that an agricultural tenant tilled the land in question does not make the case an agrarian dispute."

Again, the High Court reiterated the necessity of a tenurial arrangement/ relationship in order for a case to be classified as an agrarian dispute within the jurisdiction of the DARAB or its adjudicators. While we are mindful not to preempt any subsequent inquiry on the matter, we would just like to take note of the fact that petitioners also offered documents to show that the subject land/s were free of any tenants at the time these were sold to them. Even without ruling on the authenticity of this evidence, the same further casts doubt on the existence of any tenurial arrangement or relationship which could or may bring the present controversy into the folds of the DARAB.

Besides, RA 6657, particularly Section 16 thereof, lays down the very procedure for the acquisition of private lands for coverage of the CARL. And DAR's belated issuance of the notice of coverage miserably falls short of the above-cited procedures.

It is very clear that the relief sought by the DAR, annulment of the contracts and cancellation of titles, would necessarily involve the adjustment/adjudication of the private rights of the parties to the sale, which is beyond the jurisdiction of the DARAB to resolve.[6]

The DAR filed a motion for reconsideration, but the CA denied it in a Resolution[7] dated December 2, 2009.

Dissatisfied with the CA Decision, the DAR filed a petition for review on *certiorari* raising the sole issue, to wit:

WHETHER OR NOT THE DAR ADJUDICATION BOARD HAS JURISDICTION OVER ANNULMENT OF DEEDS OF ABSOLUTE SALE AND THE SUBSEQUENT CANCELLATION OF TITLES INVOLVING LANDS UNDER THE ADMINISTRATION AND DISPOSITION OF THE DEPARTMENT OF AGRARIAN REFORM.[8]

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[6] *Id*. at 55-58.

[7] *Id*. at 67-70.

[8] *Id*. at 13.

Citing the DAR Memorandum Circular No. 2,[9] Series of 2001,[10] the DAR argues that its petition for annulment of deeds of sale and cancellation of titles falls under the jurisdiction of the DARAB, and that such jurisdiction is not limited to agrarian disputes, but also on other matters or incident involving the implementation of all agrarian laws. Invoking Section 1,[11] Rule II of the 2003 DARAB Rules of Procedure, it questions the CA ruling that disputes cognizable by the DARAB are limited to those which involve some kind of tenurial arrangement/ relationship, and that only lands under the administration and disposition of the DAR or the Land Bank of the Philippines (*LBP*) are subject to the DARAB jurisdiction.

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[9] If there was illegal transfer, file a petition for annulment of deed of conveyance in behalf of the PARO before the Provincial Agrarian Reform Adjudicator (PARAD). The petition shall state the material facts constituting the violation and pray for the issuance of an order from the PARAD directing the ROD to cancel the deed of conveyance and the TCT generated as a result thereof. As legal basis therefore, the petition shall cite Section 50 of RA 6657 and Rule II, Section 1(c) and (e) of the DARAB Rules of Procedure.

[10] Guidelines on Annulment of Deeds of Conveyance of Lands covered by the Comprehensive Agrarian Reform Program (CARP) executed in violation of Section 6, Paragraph 4 of Republic Act No. 6657.

[11] Section 1. Primary and Exclusive Original Jurisdiction.

The Adjudicator shall have the primary and exclusive original jurisdiction to determine and adjudicate the following case:

x x x x x x x x x

1.3 The annulment or concellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP); x x x

1.5 Those involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws; x x x x x x x x x

1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlements and resettlement areas under the administration and disposition of the DAR.

The DAR also claims that the CA overlooked that the notices of coverage issued by the Municipal Agrarian Reform Officer (*MARO*) of Magdalena, Laguna, were duly served to the heirs of Eduardo, namely, Julieta and Nenita. It stresses that despite claiming no interest as successors over the subject properties in their motion to dismiss filed before the DARAB, the letter of Atty. Norberto Gonzales dated February 21, 2005 to MARO Cuaresma showed that Julieta and Nenita were opposing the coverage of the said properties under the CARL. It thus concludes that the subject properties were placed under the coverage of the compulsory acquisition scheme of the CARL.

The DAR further takes exception to the CA ruling that the notice of coverage was issued to the heirs of Eduardo, instead of the present owners, respondents. It explains that only after such notice was issued to the said heirs in 2005 and upon verification with the Register of Deeds that it found out that the property was already transferred to respondents. It further argues that the notice of coverage need not be issued to the present title holders (respondents) because if such notice will be issued to them, then it would validate or recognize the purported irregular or illegal transfer or conveyance.

Finally, the DAR contends that under Section 4 of RA 6657, the CARP covers, among other things, all private lands devoted to or suitable for agriculture, regardless of the agricultural products raised or that can be raised thereon, and that such provision makes no qualification that only lands issued with notice of coverage are covered. Applying the statutory construction principle of *exclusio unius est exclusio alterius,* it posits that there being no showing that the subject agricultural lands are exempted from the CARP, then they are covered and deemed under the administration and disposition of the DAR. Hence, its petition for annulment of deeds of sale and cancellation of titles is cognizable by the DARAB.

On the other hand, respondents counter that the CA did not err in dismissing for lack of jurisdiction DAR's petition for annulment of deeds of sale and cancellation of titles before the DARAB because such case neither involves an agrarian dispute

nor does the case concern an agricultural land under the administration and disposition of the DAR or the LBP. Citing the definition of "agrarian dispute" under Section 3 (d)[12] of R.A. No. 6657 and jurisprudence to the effect that there must exist a tenancy relationship between the parties for DARAB to have jurisdiction over a case, respondents point out that the petition was not brought for and on behalf of any purported tenants, farmworker or some other beneficiaries and the notice of coverage was belatedly issued to the wrong persons, the heirs of Eduardo, and not to them who are the present owners. Hence, there was no valid notice of coverage to place the properties within the coverage of agrarian reform and of DARAB's jurisdiction.

Respondents also reject as inaccurate and misleading petitioner's contention that the DARAB has jurisdiction over cases involving the sale of agricultural lands and those cases involving the annulment or rescission of deeds of sale, and the cancellation of titles pertaining to such lands, pursuant to Section 1 (1.5) and (1.9), Rule II of the 2003 DARAB Rules of Procedure.[13] They insist that for the Adjudicator to have

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[12] (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. 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.

[13] Section 1. *Primary and Exclusive Original Jurisdiction.*

The Adjudicator shall have the primary and exclusive original jurisdiction to determine and adjudicate the following case:

x x x x x x x x x

1.5 Those involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

x x x x x x x x x

jurisdiction over a case, the agricultural land involved—unlike the subject properties—must be under the coverage of the CARL or other agrarian laws, or under the administration and disposition of the DAR or the LBP, *i.e.,* the land involved must already be taken or acquired for CARP purposes for distribution to qualified farmer-beneficiaries.

Respondents stress that the certificates of title of Eduardo and the derivative TCTs issued to them were all free from liens and encumbrances, and that there was no annotation of any disposition of the properties or limitation on the use thereof by virtue of, or pursuant to Presidential Decree (*P.D.*) No. 27, CARL or any other law or regulations on agrarian reform inscribed on the titles. They argue that since no such annotations, like a notice of coverage or acquisition by DAR, were inscribed on Eduardo's titles which will caution respondents and/or the Register of Deeds of the Province of Laguna from registering the titles and deeds, prior DAR clearance is unnecessary. Thus, the properties embraced by Eduardo's titles are outside the coverage of CARP and registerable.

Lastly, respondents claim to be innocent purchasers in good faith and for value because they bought the subject properties and paid a full and fair price without notice of some other person's claim on or interest in them. They also seek refuge under Section 32 of P.D. No. 1529 which provides that after the expiration of one (1) year from and after the date of entry of the decree of registration, not only such decree but also the corresponding certificate of title, becomes incontrovertible and infeasible, and cannot be altered, modified, cancelled, or subject to any collateral attack, except in a direct proceeding in accordance with law.

The petition is meritorious.

1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as Eps issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlements and resettlement areas under the administration and disposition of the DAR.

In resolving the sole issue of whether or not the DARAB has jurisdiction over the DAR's petition for annulment of deeds of sale and cancellation of titles, the Court is guided by the following rules on jurisdiction laid down in *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*:[14]

> It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action. The failure of the parties to challenge the jurisdiction of the DARAB does not prevent the court from addressing the issue, especially where the DARAB's lack of jurisdiction is apparent on the face of the complaint or petition.
>
> Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss. Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. If the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB. The proceedings before a court or tribunal without jurisdiction, including its decision, are null and void, hence, susceptible to direct and collateral attacks.[15]

In *Department of Agrarian Reform v. Paramount Holdings Equities, Inc.,*[16] the Court defined the limits of the quasi-judicial power of DARAB, thus:

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[14] 512 Phil. 389, 400-401(2005).

[15] *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz, supra*, at 755-757.

[16] G.R. No. 176838, June 13, 2013, 698 SCRA 324, 333.

The jurisdiction of the DARAB is limited under the law, as it was created under Executive Order (E.O.) No. 129-A specifically to assume powers and functions with respect to the adjudication of agrarian reform cases under E.O. No. 229 and E.O. No. 129-A. Significantly, it was organized under the Office of the Secretary of Agrarian Reform. The limitation on the authority of it to mere agrarian reform matters is only consistent with the extent of DAR's quasi-judicial powers under R.A. No. 6657 and E.O. No. 229, which read:

> SECTION 50 [of R.A. No. 6657]. Quasi-Judicial Powers of the DAR.—The DAR is hereby vested with the **primary jurisdiction to determine and adjudicate agrarian reform matters** and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).
>
> SECTION 17 [of E.O. No. 229]. Quasi-Judicial Powers of the DAR.—The DAR is hereby vested with **quasi-judicial powers to determine and adjudicate agrarian reform matters**, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).[17]

In *Sta. Rosa Realty Development Corporation v. Amante,*[18] the Court pointed out that the jurisdiction of the DAR under the aforequoted provisions is two-fold. The first is essentially executive and pertains to the enforcement and administration of the laws, carrying them into practical operation and enforcing their due observance, while the second is quasi-judicial and involves the determination of rights and obligations of the parties.

At the time the petition for annulment of deeds of sale and cancellation of titles was filed on May 26, 2006, the administrative function of the DAR was governed by Administrative Order No. 03, Series of 2003 which provides for the 2003 Rules of Procedure for Agrarian Law Implementation (ALI) Cases. Under

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[17] Emphasis added.

[18] 493 Phil. 570, 606 (2005).

said Rules of Procedure, the Regional Director[19] has primary jurisdiction over all ALI cases, while the DAR Secretary[20] has appellate jurisdiction over such cases. Section 2 of the said Rules provides:

Section 2. *ALI Cases*. These Rules shall govern all cases arising from or involving:

2.1 Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), including protests or oppositions thereto and petitions for lifting of such coverage.

2.2 Classification, identification, inclusion, exclusion, qualification or disqualification of potential/actual farmer-beneficiaries;

2.3 Subdivision surveys of land under Comprehensive Agrarian Reform Program (CARP)

2.4 Recall, or cancellation of provisional release rentals, Certificates of Land Transfers (CLTs), and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (P.D.) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

2.5 Exercise of the right of retention by the landowner;

2.6 Application for exemption from coverage under Section 10 of RA 6657;

2.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990)

2.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

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[19] Rule II, Section 7. General Jurisdiction. The Regional Director shall exercise primary jurisdiction over all agrarian law implementation cases except when a separate special rule vests primary jurisdiction in a different DAR office.

[20] Rule II, Section 10. Appellate Jurisdiction. The Secretary shall exercise appellate jurisdiction over all ALI cases and may delegate the resolution of appeals to any Undersecretary.

2.9 Cases of exemption/exclusion of fishpond and prawn farms from the coverage of CARP pursuant to RA 7881;

2.10 Issuance of Certificate of Exemption for land subject to Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

2.11 Application for conversion of agricultural land to residential, commercial, industrial or other non agricultural uses and purposes including protests or oppositions thereto;

2.12 Determination of rights of agrarian reform beneficiaries to homelots;

2.13 Disposition of excess area of the tenant's/farmer-beneficiary's landholdings;

2.14 Increase in area of tillage of a tenant/farmer-beneficiary;

2.15 Conflict of claims in landed estates administered by the DAR and its predecessors; and

2.16 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

On the other hand, in the exercise of its quasi-judicial function, the DAR, through its adjudication arm, *i.e.,* the DARAB and its regional and provincial adjudication boards, adopted the 2003 DARAB Rules of Procedure. Under Section 2, Rule II of the said Rules of Procedure, the DARAB shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators who have primary and exclusive original jurisdiction over the following cases:

Rule II
Jurisdiction of the Board and its Adjudicators

SECTION 1. *Primary and Exclusive Original Jurisdiction.* — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by Republic Act (RA) No. 6657, otherwise

known as the Comprehensive Agrarian Reform Law (CARL), and other related agrarian laws;

1.2 The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree (PD) No. 27 and the Comprehensive Agrarian Reform Program (CARP);

1.3 The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP);

1.4 Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

1.5 Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

1.7 Those cases involving the review of leasehold rentals;

1.8 Those cases involving the collection of amortizations on payments for lands awarded under PD No. 27, as amended, RA No. 3844, as amended, and RA No. 6657, as amended, and other related laws, decrees, orders, instructions, rules, and regulations, as well as payment for residential, commercial, and industrial lots within the settlement and resettlement areas under the administration and disposition of the DAR;

1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlement and re-settlement areas under the administration and disposition of the DAR;

1.10 Those cases involving boundary disputes over lands under the administration and disposition of the DAR and the LBP, which are transferred, distributed, and/or sold to tenant-beneficiaries and are covered by deeds of sale, patents, and certificates of title;

1.11 Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding; and

1.12 Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of PD No. 946 except those cases falling under the proper courts or other quasi-judicial bodies;
1.13 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

Section 3, Rule II of the 2003 DARAB Rules of Procedure further states that the Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances.

Meanwhile, the Regional Trial Courts (*RTCs*) have not been completely divested of jurisdiction over agrarian reform matters.[21] Section 56 of RA 6657 confers "special jurisdiction" on "Special Agrarian Courts," which are RTCs designated by the Court — at least one (1) branch within each province — to act as such. As Special Agrarian Courts (*SACs*), these RTCs have, according to Section 57 of the same law, original and exclusive jurisdiction over "all petitions for the determination of just compensation to land-owners" and "the prosecution of all criminal offenses under . . [the] Act."[22]

In order to determine in accordance with the foregoing provisions which among the DARAB and the Office of the Secretary of DAR, and the SACs has jurisdiction over the nature and subject matter of the petition for annulment of the deeds of sale executed by Eduardo in favor of respondents and the cancellation of the TCTs issued to them, it is necessary to examine the following allegations therein and the character of the relief sought, irrespective whether the petitioner is entitled thereto:[23]

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[21] *Vda. de Tangub v. Court of Appeals,* 270 Phil. 88, 97 (1990).

[22] *Id*.

[23] *Heirs of Candido Del Rosario v. Del Rosario,* G.R. No. 181548, June 20, 2012, 674 SCRA 180, 191-192.

4.1 **The late Eduardo Reyes was the original registered owner of TCT 85055 and TCT 116506, an agricultural land** situated at Brgy. Ambling, Magdalena, Laguna, **consisting of 195,366 sq. meters and 7,431 sq. meters**, respectively.

4.2 The land described under TCT 85055 was issued a notice of coverage under the Compulsory Acquisition (CA) scheme pursuant to Section 7 of R.A. 6657. Subdivision plan over this property has been approved and the DAR is now on the process of generating the Certificate of Land Ownership Award (CLOA) to the qualified recipient of the government's land reform program. However, pending processing of the case folder, the DAR Municipal Office in Magdalena received on September 8, 2005 a letter coming from Atty. Homer Antazo, the alleged counsel of Igmidio Robles and Christina Robles informing the MAR Office of the subsequent sale of the property in their favor attaching documents in support of their claim. It was only then, **after proper verification with the Register of Deeds that the DAR found out that indeed the properties under TCT-T-85055 and TCT T-116506 were all conveyed and transferred in favor of the herein private respondents by well intentioned deeds of absolute sale executed in 1997.** xxx **Subsequently, by virtue of such deeds of sale the Registry of Deeds caused the cancellation of TCT T-85055 and TCT 116506 and the issuance of new titles in private respondents' favor without securing the necessary clearance from the DAR as mandated under Administrative Order No. 1 series of 1989**. xxx **The said titles were issued arbitrarily and in clear violation of Section 6 of R.A. 6657, hence null and void**. xxx

4.3 Public respondent Registry of Deeds might [have] overlooked the transaction entered into and misplaced knowledge on these big track of landholdings when it proceeded with the registration of the deeds of sale and the subsequent cancellation of TCT 85055 and TCT 116506.

4.4 The Registry of Deeds was probably not aware and mindful on **the extent of properties of Eduardo Reyes, that it exceeded more than the retention limit** but, thru machinations and crafty action exerted to by the parties to accomplish an evil end, the immediate cancellation was brought to completion.

4.5 Hence, because it was tainted with fraud and bad faith, said certificate of titles cannot enjoy the presumption of having been issued by the register of deeds in the regular performance of its official duty;

4.6 That, as a consequence of swift and speedy cancellation of TCT 85055 and TCT 116506 and the instantaneous issuance of titles, the DAR, because of this intervening development cannot now continue with the generation of CLOA, prompting the filing of the instant petition.

5. PRAYER

WHEREFORE, above premises considered, it is most respectfully prayed of this Honorable Adjudication Board that after due notice and hearing, judgment be rendered annulling the Deeds of Absolute Sale executed by the late Eduardo Reyes in favor of the herein private respondents and the subsequent cancellation of the issued transfer certificate of titles.

Petitioner likewise pray for such other relief and remedies as this Honorable Board may deem just and equitable under the premises.[24]

Although no tenancy or agrarian relationship between the parties can be gleaned from the allegations of the petition in order to be considered an agrarian dispute within the DARAB's jurisdiction, the Court notes that the petition is anchored on the absence of a clearance for the sale and registration of the subject agricultural lands in favor of respondents, as required by DAR Administrative Order No. 1, series of 1989 (*A.O. No. 01-89*)[25] or the Rules and Procedures Governing Land Transaction. Clearly, such petition involves the matter of implementation of agrarian laws which is, as a general rule, within the primary jurisdiction of the DAR Regional Director.

It bears stressing that while the rule is that DARAB's jurisdiction is limited to agrarian disputes where tenancy relationship between the parties exists, Section 50 of R.A. No. 6657 and Section 17 of E.O. No. 229 both plainly state that the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters. It is also noteworthy that

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[24] CA *rollo*, pp. 39-41. (Emphasis added.)

[25] Adopted: January 3, 1989; Effective: January 26, 1989.

while Section 3(d)[26] of R.A. No. 6657 defined the term "agrarian dispute," no specific definition was given by the same law to the term "agrarian reform matters." In view thereof, the Court cannot restrict the DARAB's quasi-judicial jurisdiction only to those involving agrarian disputes where tenancy relationship exists between the parties, for it should also include other "agrarian reform matters" which do not fall under the exclusive jurisdiction of the Office of the Secretary of DAR, the Department of Agriculture and the Department of Environment and Natural Resources, as well as the Special Agrarian Courts.

Although they are not deemed as "agrarian disputes" falling under the DARAB's jurisdiction, "[s]uch other agrarian cases, disputes, matters or concerns" referred to the Adjudicator by the Secretary of the DAR pursuant to Section 1 (1.13), Rule II of the 2003 DARAB Rules of Procedure, are still considered as "agrarian reform matters." A case in point is the DAR's petition for annulment of deeds of sale and annulment of titles executed in violation of the provision Section 6, par. 4 of RA 6657. Despite being an agrarian law implementation case, the Secretary of the DAR expressly referred jurisdiction over such petition to the Provincial Adjudicator of the DARAB through Memorandum Circular (*M.C.*) No. 02-01[27] on the Guidelines on Annulment of Deeds of Conveyance of Lands Covered by the Comprehensive Agrarian Reform Program (CARP) Executed in Violation of Section 6, Paragraph 4 of Republic

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[26] (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.

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.

[27] Adopted: January 9, 2001; Effective: January 23, 2001.

Act (RA) No. 6657. Section 4 of DAR M.C. No. 02-01 pertinently provides:

b) The Chief, Legal Division, of the Provincial Agrarian Reform Office, shall have the following responsibilities:

1. Upon receipt of the MARO report, determine whether or not there was illegal transfer of agricultural lands pursuant to Sec. 6, par. 4 of RA 6657;

2. **If there was illegal transfer, file a petition for annulment of the deed of conveyance in behalf of the PARO before the Provincial Agrarian Reform Adjudicator (PARAD).** The petition shall state the material facts constituting the violation and pray for the issuance of an order from the PARAD directing the ROD to cancel the deed of conveyance and the TCT generated as a result thereof. As legal basis therefor, the petition shall cite Section 50 of RA 6657 and Rule II, Section 1(c) and (e) of the [1994] DARAB New Rules of Procedure;[28]

Concededly, the properties subject of the petition for annulment of deeds of sale and cancellation of titles cannot be considered as lands under the administration of the DAR or LBP, *i.e.,* those already acquired for CARP purposes and distributed to qualified farmer-beneficiaries.[29] Hence, such petition is outside the DARAB jurisdiction under Section 1 (1.9),[30] Rule II of the 2003 DARAB Rules of Procedure.

Nevertheless, it can be gathered from the allegations in the petition that the subject properties Eduardo conveyed and transferred to respondents are agricultural lands in excess of the 5-hectare (50,000 sq. m.) retention limit of the CARL, and that the corresponding TCTs were later issued and registered

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[28] Emphasis added.

[29] *Dandoy v. Tongson,* 514 Phil. 384, 391 (2005).

[30] 1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as Eps issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlements and resettlement areas under the administration and disposition of the DAR.

in their names without the necessary clearance under DAR A.O. No. 1, series of 1989.

In *Sarne v. Hon. Maquiling*,[31] the Court construed the phrase "agricultural lands under the coverage of the CARP" under Section 1(e),[32] in relation to Section 1 (c),[33] Rule II of the 1994 DARAB Rules of Procedure, which are similarly-worded as Sections 1 (1.3) and (1.5), Rule II of the 2003 DARAB Rules of Procedure, thus:[34]

> It is clear that the jurisdiction of the DARAB in this case is anchored on Section 1, paragraph (e), Rule II of the [1994] DARAB New Rules of Procedure covering agrarian disputes involving the sale, alienation, mortgage, foreclosure, preemption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws. There is nothing in the provision from which it can be inferred that the jurisdiction of the DARAB is limited only to agricultural lands under the administration and disposition of DAR and LBP. We should not distinguish where the law does not distinguish. **The phrase "agricultural lands under the coverage of the CARP" includes all private lands devoted to or suitable for agriculture, as defined under Section 4 of R.A. No. 6657**. It is worthy to note that in the enumeration defining the DARAB's jurisdiction, it is only in paragraph (c), that is, cases involving the annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands, that the phrase "involving lands under the administration and disposition of the DAR or LBP" is used. That the same proviso does not appear in paragraph (e), which is the basis of respondents' cause of action, could only mean that it was never intended to be so limited. xxx[35]

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[31] 431 Phil. 675 (2002).

[32] e) Those involving the sale, alienation, mortgage, foreclosure, preemption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

[33] c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

[34] *Sarne v. Hon. Maquiling, supra* note 31.

[35] *Id*. at 689. (Emphasis added.)

Contrary to the view of the CA and the respondents, therefore, a notice of coverage is not necessary in order for the DARAB to have jurisdiction over a case that involves the sale or alienation of agricultural lands "under the coverage of the CARP" pursuant to Section 1 (1.5),[36] Rule II of the 2003 DARAB Rules of Procedure, as such phrase includes all private lands devoted to or suitable for agriculture, as defined under Section 4 of R.A. No. 6657:

CHAPTER II
COVERAGE.

Section 4. *Scope.* — The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture; and

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

In light of the principle that jurisdiction over the subject matter and nature of the petition is conferred by law and determined by the material allegations therein, and is not affected by the

[36] 1.5 Those involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

defenses or theories set up in the respondent's answer or motion to dismiss, the Court finds that the DAR's petition for annulment of deeds of sale and cancellation of titles falls under the jurisdiction of the PARAD under Section 1 (1.5), Rule II of the 2003 DARAB Rules of Procedure, as it contains sufficient allegations to the effect it involves sales of agricultural lands under the coverage of the CARL.

To be sure, the Court does not undermine the significance of the notice of coverage for purposes of acquisition of lands under the CARP. A letter informing a landowner that his/her land is covered by CARP, and is subject to acquisition and distribution to beneficiaries, and that he/she has rights under the law, including the right to retain 5 hectares, the notice of coverage first sprung from DAR A.O. No. 12, Series of 1989,[37] to fill in the gap under Section 16 of the CARL on the identification process of lands subject to compulsory acquisition. In *Roxas & Co., Inc. v. Court of Appeals*,[38] the Court stressed the importance of such notice as a step designed to comply with the requirements of administrative due process:

> The importance of the first notice, *i.e.,* the Notice of Coverage and the letter of invitation to the conference, and its actual conduct cannot be understated. They are steps designed to comply with the requirements of administrative due process. The implementation of the CARL is an exercise of the State's police power and the power of eminent domain. To the extent that the CARL prescribes retention limits to the landowners, there is an exercise of police power for the regulation of private property in accordance with the Constitution. But where, to carry out such regulation, the owners are deprived of lands they own in excess of the maximum area allowed, there is also a taking under the power of eminent domain. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer beneficiary. The Bill of Rights provides that "[n]o person shall be

[37] Revised Rules and Regulations on the Compulsory Acquisition of Agricultural Lands under R.A. No. 6657.

[38] 378 Phil. 727, 762 (1999).

deprived of life, liberty or property without due process of law." The CARL was not intended to take away property without due process of law. The exercise of the power of eminent domain requires that due process be observed in the taking of private property.[39]

Given that the notices of coverage were issued to the wrong persons, the heirs of the former owner, Eduardo, instead of respondents who are the present owners of the subject properties, the DAR can hardly be faulted for such mistake. It bears emphasis that while Eduardo executed the corresponding deeds of absolute sale in favor of respondents as early as April 17, 1997, it was only on May 3, 2005 that said deeds were registered in the names of respondents. Meantime, in view of the death of Eduardo on October 28, 2000, the DAR had no choice but to send the Notices of Coverage dated September 8, 2004 and November 23, 2004 to his heirs, Julieta and Nenita, respectively. While said deeds of sale are binding between the said heirs of Eduardo and respondents, the DAR could not have been aware thereof for lack of registration which is the operative act that binds or affects the land insofar as third persons are concerned. Thus, the DAR cannot be blamed for erroneously issuing such notices to the said heirs because it merely relied on available public records at the Register of Deeds, showing that the original landowner of the said properties is the late Eduardo.

For its part, despite the DAR's allegation that it only found out that the subject properties were already conveyed and transferred in favor of respondents when its Municipal Office in Magdalena, Laguna, received on September 8, 2005 a letter from the counsel of respondent Igmedio Robles and Christina Robles, it should be deemed to have constructive notice of said deeds only from the time of their registration on May 3, 2005. From the date of such registration, the DAR should have also issued respondents notices of coverage pursuant to DAR M.C. No. 18-04 (Clarificatory Guidelines on the Coverage, Acquisition and Distribution of Agricultural Lands Subject of Conveyance Executed in Violation of Sec. 6, Par. 4 of R.A. No. 6657) which modified DAR M.C. No. 02-01,

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[39] *Roxas & Co., Inc. v. Court of Appeals, supra,* at 762-763.

3. Notwithstanding the pendency of the investigation and/or the petition for annulment of deed of conveyance, the DAR shall issue a notice of coverage to both old and new landowner/s in order for the LBP to proceed with the valuation of the property. For this purpose, the DAR Provincial or Regional Office and the Land Bank of the Philippines may execute an agreement for purposes of issuing memorandum of valuation and certificate of deposit to be held in trust for the rightful owner/s.

The Court, however, holds that the DAR cannot be taken to task for failing to issue notices of coverage to respondents because the land areas of the subject properties sold to them, respectively, are all within the 5-hectare (50,000 sq. m.) retention limit. Respondents cannot, therefore, contend that a notice of coverage is necessary in order for a land to be considered under the coverage of the CARP for purposes of filing a petition under DAR M.C. No. 02-01 in relation to violation of Section 6, paragraph 4 of RA 6657. To sustain respondents' contention would subvert the objectives of the said provision to prevent circumvention of the retention limits set by law on ownership of agricultural lands after the effectivity of CARL on June 15, 1988, and to prevent the landowner from evading CARP coverage. Hence, the Court cannot uphold such contention, as it would ultimately defeat the purpose of the agrarian reform program of achieving social justice through equitable distribution of large landholdings to tenants or farmers tilling the same.

Furthermore, at the time of the sale of the subject properties on April 17, 1997, there were existing tenants thereon as shown by the Deeds of Surrender of Tenancy Rights[40] dated July 10, 1997 later executed in favor of the buyers, respondents Igmidio and Cristina Robles. Then, in identically-worded certifications dated August 29, 1997, the BARC Chairman and the Barangay Chairman of Ambiling, Magdalena, Laguna, both stated that the property covered by TCT No. 85055 with an area of 195,366 sq. m. is a coconut land without any tenant and may be converted into an industrial, resort, low-

[40] CA *rollo*, pp. 84-95.

cost housing or residential subdivision.[41] Without ruling on the validity of the deeds of surrender of tenancy rights, the Court finds that the execution thereof subsequent to that of the deeds of sale, alongside the certifications of the BARC Chairman and Barangay Chairman, casts doubt on the validity of the transfer and conveyance of the subject properties as a ploy to circumvent the retention limits and coverage under the CARP.

It is noteworthy that in *Department of Agrarian Reform v. Paramount Holdings Equities, Inc.,*[42] the Court had resolved in the negative the issue of whether or not the DARAB has jurisdiction over a dispute that seeks the nullification of the sale of agricultural lands because (1) the PARO's petition failed to sufficiently allege any tenurial or agrarian relations and to indicate an agrarian dispute, and (2) the said lands had not been the subject of any notice of coverage under the CARP.

Despite the fact that the same jurisdictional issue is involved in this case, the Court's ruling in *Paramount* is inapplicable because of the difference between the material allegations in the PARO's petitions in both cases.

Given that the PARO's petition in this case likewise failed to allege any tenancy or agrarian relations and to indicate an agrarian dispute, and its cause of action is merely founded on the absence of a clearance to cover the sale and registration of the subject lands, it bears emphasis that the DARAB's jurisdiction is not limited to agrarian disputes where tenancy relationship between the parties exists. Under Section 1 (1.13),[43]

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[41] *Id*. at 82-83.

[42] *Supra*, note 16.

[43] Section 1. *Primary and Exclusive Original Jurisdiction.* – The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x x x x x x

1.13 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of DAR.

x x x x x x x x x

Rule II of the 2003 DARAB Rules of Procedure, the DARAB also has jurisdiction over agrarian reform matters referred to it by the Secretary of DAR, such as the PARO's petition for annulment of deeds of sale and annulment of titles filed pursuant to DAR A.O. No. 01-89[44] and DAR M.C. No. 02-01[45] for violation of the legal requirement for clearances in the sale and transfer of agricultural lands.

In contrast to *Paramount* where it is undisputed that the subject lands had not been subject of any notice of coverage under the CARP, the PARO's petition in this case alleged that one of the subject lands was issued a notice of coverage.[46] At

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[44] The Rules and Procedures Governing Land Transaction.

[45] Guidelines on Annulment of Deeds of Conveyance of Lands Covered by the Comprehensive Agrarian Reform Program (CARP) Executed in Violation of Section 6, Paragraph 4 of Republic Act (RA) No. 6657. Section 4 (b) of DAR M.C. No. 02-01 pertinently provides:

SEC. 4 ***Operating Procedures –*** The procedures for annulment of deeds of conveyance executed in violation of RA 6657 are as follows:

x x x x x x x x x

b) The Chief, Legal Division, of the Provincial Agrarian Reform Office, shall have the following responsibilities:

1. Upon receipt of the MARO report, determine whether or not there was illegal transfer of agricultural lands pursuant to Sec. 6, par. 4 of R.A. 6657;

2. **If there was illegal transfer, file a petition for annulment of the deed of conveyance in behalf of the PARO before the Provincial Agrarian Reform Adjudicator (PARAD).** The petition shall state the material facts constituting the violation and pray for the issuance of an order from the PARAD directing the ROD to cancel the deed of conveyance and the TCT generated as a result thereof. As legal basis therefor, the petition shall cite Section 50 of RA 6657 and Rule II, Section 1(c) and (e) of the [1994] DARAB New Rules of Procedure. x x x

[46] 4.1 **The late Eduardo Reyes was the original registered owner of TCT 85055** and TCT 116506, **an agricultural land** situated at Brgy. Ambiling, Magdalena, Laguna, consisting of 195,366 sq. m. and 7,431 sq. meters, respectively.

4.2 **The land described under TCT 85055 was issued a notice of coverage under the Compulsory Acquisition (CA) scheme pursuant to Section 7 of R.A. 6657.** x x x. Emphasis added. *See* CA *rollo*, pp. 39-40.

any rate, the Court holds that such notice is unnecessary in order for the DARAB to have jurisdiction over a case that involves the sale of "agricultural lands under the coverage of the CARP," pursuant to Section 1 (1.5),[47] Rule II of the 2003 DARAB Rules of Procedure. As held in *Sarne v. Maquiling*,[48] the said phrase includes all private lands devoted to or suitable for agriculture, as defined under Section 4[49] of RA No. 6657. In view of the rule that jurisdiction over the subject matter and nature of the petition is determined by the allegations therein and the character of the relief prayed for, irrespective of whether the petitioner is entitled to any or all such reliefs,[50] the Court

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[47] SECTION 1. *Primary and Exclusive Original Jurisdiction.* – The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x x x x x x

1.5. Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

x x x x x x x x x

[48] *Supra* note 31, p. 689.

[49] Section 4. *Scope.*— The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands; as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture. More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture; and

(d) All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.

[50] *Department of Agrarian Reform v. Paramount Holdings Equities, Inc., supra*, at 336-337.

finds that the PARO's petition for annulment of sale and cancellation of titles falls under the jurisdiction of the DARAB, as it contains allegations to the effect that it involves sales of agricultural lands under the coverage of the CARL.

Significantly, unlike in this case where the transfer of the subject properties appears to have been done to evade the retention limits and coverage under CARP, *the Court found the original petition in* Paramount dismissible on the merits as the records clearly showed that the subject lands were already classified as "industrial" long before the effectivity of the CARL.

The Court also overrules respondents' argument that the subject properties are outside the coverage of CARP and registerable, since no annotation of any disposition of the properties or limitation on the use thereof by virtue of, or pursuant to P.D. No. 27, CARL or any other law or regulations on agrarian reform was inscribed on Eduardo's titles and their derivative titles. Quite the contrary, TCT Nos. T-85055 and T-116506 under the name of Eduardo contain provisions stating that he is the owner thereof in fee simple, subject to the encumbrances mentioned in Section 39 of Act No. 496, or the Land Registration Act,[51] and Section 44 of P.D. 1529, or the Property Registration Decree, respectively.

Section 39 of Act No. 496 and Section 44 of P.D. No. 1529 similarly provide for statutory liens which subsist and bind the whole world, even without the benefit of registration under the Torrens System:

> Section 39. Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:
>
> **First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which**

[51] CA *rollo*, p. 53

the statutes of the Philippine Islands cannot require to appear of record in the registry.

x x x x x x x x x[52]

SEC. 44. Statutory liens affecting title.- Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate and any of the following encumbrances which may be subsisting, namely:

x x x x x x x x x

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.[53]

The Court is of the view that the provision on retention limits under Section 6 of RA 6657 constitutes as statutory liens on Eduardo's titles, which were carried over to respondents' derivative titles, even if no such annotations were inscribed on all of the said titles. In particular, such statutory liens pertain to paragraph 4 of Section 6 of RA 6657 in relation to Section 73 of the same law, which read:

Section 6. ***Retention Limits.*** — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: provided, that landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: provided, further, that original homestead grantees or their direct compulsory heirs who

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[52] Emphasis added.

[53] *Id*.

still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

x x x x x x x x x

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or **transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void**: provided, however, that those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

Section 73. ***Prohibited Acts and Omissions.*** — The following are prohibited: (a) **The ownership or possession, for the purpose of circumventing the provisions of this Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical**, except those under collective ownership by farmer-beneficiaries.

x x x x x x x x x

(e) The **sale, transfer, conveyance** or change of the nature **of lands outside of urban centers and city limits either in whole or in part after the effectivity of this Act**. The date of the registration of the deed of conveyance in the Register of Deeds with respect to titled lands and the date of the issuance of the tax declaration to the transferee of the property with respect to unregistered lands, as the case may be, shall be conclusive for the purpose of this Act.[54]

As Eduardo's titles contain such statutory liens, respondents have imputed knowledge that the transfer of the subject properties in excess of the landowner's 5-hectare (50,000 sq. m.) retention limit under the CARL could have been illegal as it appears to circumvent the coverage of CARP. Thus, until the PARAD has decided with finality the DAR's petition for annulment of deeds of sale and cancellation of titles for alleged violation of

[54] *Id.*

Section 6, paragraph 4 of RA 6657, respondents cannot claim that they are innocent purchasers for value and in good faith.

There is also no merit in respondents' contention that the TCTs issued in their favor have become incontrovertible and indefeasible, and can no longer be altered, canceled or modified or subject to any collateral attack after the expiration of one (1) year from the date of entry of the decree of registration, pursuant to Section 32 of P.D. No. 1529. In *Heirs of Clemente Ermac v. Heirs of Vicente Ermac,*[55] the Court clarified the foregoing principle in this wise:

> While it is true that Section 32 of PD 1529 provides that the decree of registration becomes incontrovertible after a year, it does not altogether deprive an aggrieved party of a remedy in law. The acceptability of the Torrens System would be impaired, if it is utilized to perpetuate fraud against the real owners.
>
> Furthermore, ownership is not the same as a certificate of title. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[56]

In *Lacbayan v. Samoy, Jr.,*[57] the Court noted that what cannot be collaterally attacked is the certificate of title, and not the title itself:

> x x x The certificate referred to is that document issued by the Register of Deeds known as the TCT. In contrast, the title referred to by law means ownership which is, more often than not, represented by that document. xxx Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.

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[55] 451 Phil. 368 (2003). (Citations omitted.)

[56] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac, supra,* at 376.

[57] 661 Phil. 307, 317 (2011).

In this case, what is being assailed in the DAR's petition for annulment of deeds of sale and cancellation of titles is the legality of the transfer of title over the subject properties in favor of respondents, and not their corresponding TCTs, due to the absence of DAR clearance and for possible violation of Section 6, paragraph 4 of R.A. No. 6657.

All told, the CA erred in dismissing for lack of jurisdiction the DAR's petition for annulment of deeds of sale and cancellation of titles before the PARAD, and in holding that it is the regular courts that should determine if indeed there were violations of the agrarian laws which would justify the grant of such petition. As can be determined from the allegations of the petition, the DARAB has jurisdiction over such case which involves agrarian reform matters under Section 1 (1.5)[58] and (1.13),[59] Rule II of the 2003 DARAB Rules of Procedure.

WHEREFORE, the petition is **GRANTED**, and the Court of Appeals Decision dated May 29, 2009 and its Resolution dated December 2, 2009 in CA-G.R. SP No. 104896, are **REVERSED** and **SET ASIDE**. The Resolutions dated February 7, 2008 and June 26, 2008 of the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board, Region IV-A, are **REINSTATED**. The said Adjudicator is **ORDERED** to proceed with dispatch in the resolution of the Petition for Annulment of Deeds of Sale and Cancellation of TCT Nos. T-238504, T-238505, T-238506, T-238507, T-238503, and T-238502, docketed as DARAB Case No. R-0403-0032-0037-06.

SO ORDERED.

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

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[58] 1.5 Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws.

[59] 1.13 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECOND DIVISION

[G.R. No. 192947. December 9, 2015]

MELANIE E. DE OCAMPO, *petitioner, vs.* **RPN-9/RADIO PHILIPPINES NETWORK, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF FINALITY OF JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL, IT MAY NO LONGER BE MODIFIED IN ANY RESPECT.—** It is basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "[n]othing is more settled in law." Once a case is decided with finality, "the controversy is settled and the matter is laid to rest." Accordingly, a final judgment may no longer be modified in any respect "even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land." Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose, is null and void. x x x This rule, however, does admit of exceptions. x x x Consistent with the principle of finality of judgments, it follows that no appeal may be taken from orders of execution of judgments.

2. **ID.; ID.; ID.; ID.; RATIONALE.—** This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case.

3. **ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PENDING PETITION FOR *CERTIORARI* SHALL NOT STAY THE JUDGMENT OR ORDER THAT IT ASSAILS UNLESS A TEMPORARY RESTRAINING ORDER OR A WRIT OF**

PRELIMINARY INJUNCTION IS ISSUED.— [F]iling a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." Unlike an appeal, a pending petition for certiorari shall not stay the judgment or order that it assails. The 2005 Rules of Procedure of the National Labor Relations Commission, which were in effect when the material incidents of this case occurred, explicitly and specifically makes this principle applicable to decisions of labor arbiters and of the National Labor Relations Commission. x x x Accordingly, where no restraining order or writ of preliminary injunction is issued, the assailed decision lapses into finality. Thereafter, execution may ensue.

4. ID.; ACTIONS; ESTOPPEL; FAILURE TO ASSERT A RIGHT WITHIN A REASONABLE TIME WARRANTS A PRESUMPTION THAT THE PARTY ENTITLED TO ASSERT IT EITHER HAS ABANDONED IT OR DECLINED TO ASSERT IT.— By her inaction, petitioner made it appear that as far as she was concerned, Executive Labor Arbiter Manansala's Decision should have stood as it did. Her inaction revealed that she saw no reason for the same Decision to be revisited or reconsidered by Executive Labor Arbiter Manansala himself, by the National Labor Relations Commission, or by any court. She failed to act in a timely manner—that is, by pursuing the appropriate remedy within the duration permitted by the rules. She failed "to assert a right within a reasonable time, [and this] warrant[ed] a presumption that the party entitled to assert it [i.e., petitioner] either has abandoned it or declined to assert it." Stated otherwise, to petitioner may be imputed estoppel by laches.

APPEARANCES OF COUNSEL

Urbano Ancheta Sianghio & Lozada Law Offices for petitioner.

Gerodias Suchianco Estrella for respondent.

D E C I S I O N

LEONEN, *J.*:

Unlike an appeal, a pending petition for certiorari shall not stay the judgment or order that it assails. Unless a restraining order or writ of preliminary injunction is issued, the assailed decision lapses into finality. Thereafter, it can no longer be disturbed, altered, or modified, and execution may ensue.

This Petition for Review on Certiorari, filed under Rule 45 of the 1997 Rules of Civil Procedure, prays that the assailed March 5, 2010 Decision[1] and July 8, 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 108457 be reversed and set aside. The Petition further prays that the recomputation that petitioner Melanie De Ocampo (De Ocampo) sought in the monetary award she had already received be permitted in order that she may receive additional backwages, separation pay, and 13th month pay, as well as 12% interest per annum.[3]

In its assailed March 5, 2010 Decision, the Court of Appeals dismissed De Ocampo's Petition for Certiorari and affirmed the September 30, 2008 Decision[4] and December 15, 2008 Resolution[5] of the National Labor Relations Commission. In its

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[1] *Rollo*, pp. 33-39. The Decision was penned by Associate Justice Estela M. Perlas-Bernabe (now Associate Justice of this court) and concurred in by Associate Justices Rebecca De Guia-Salvador and Michael P. Elbinias of the Sixth Division, Court of Appeals Manila.

[2] *Id*. at 40. The Resolution was penned by Associate Justice Estela M. Perlas-Bernabe (now Associate Justice of this court) and concurred in by Associate Justices Rebecca De Guia-Salvador and Michael P. Elbinias of the Former Sixth Division, Court of Appeals.

[3] *Id*. at 29, Petition for Review on *Certiorari*.

[4] *Id*. at 207-215. The Decision was penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

[5] *Id*. at 217-218. The Resolution was penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

assailed July 8, 2010 Resolution, the Court of Appeals denied De Ocampo's Motion for Reconsideration.[6]

For its part, the National Labor Relations Commission affirmed the December 13, 2007[7] Order of Executive Labor Arbiter Manuel M. Manansala (Executive Labor Arbiter Manansala), which denied De Ocampo's Motion to Recompute the Monetary Award with Motion to Issue Alias Writ of Execution.[8]

De Ocampo was the complainant in a case for illegal dismissal, unpaid salaries, damages, and attorney's fees against respondent Radio Philippines Network, Inc. (RPN-9) and several RPN-9 officers, namely: President Cerge Remonde; News and Current Affairs Manager Rodolfo Lacuna; and Human Resources Manager Lourdes Angeles. This case was docketed as NLRC-NCR Case No. 00-05-05857-2003.[9]

On May 12, 2004, Executive Labor Arbiter Manansala rendered the Decision[10] finding De Ocampo to have been illegally dismissed. RPN-9 was ordered to pay her separation pay in lieu of reinstatement and full backwages. The impleaded officers of RPN-9 were absolved from liability. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondent Radio Philippines Network, Inc. (RPNI) also known as RPN-9 guilty of illegal dismissal for the reasons above-discussed. Consequently, the aforenamed respondent is hereby directed to pay complainant Melanie De Ocampo the sum of ₱206,433.50 and ₱109,200.00 representing her full-backwages and separation pay, respectively, for the reasons above-discussed, and as computed by the Examination and Computation Unit of this Arbitration Branch (See Annex "A", of this Decision).

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[6] *Id*. at 40.

[7] *Id*. at 95-101.

[8] *Id*. at 79-89.

[9] *Id*. at 33-34, Court of Appeals Decision dated March 5, 2010.

[10] *Id*. at 41-54.

2. Directing respondent Radio Philippines Network, Inc. (RPNI) also known as RPN-9 to pay complainant Melanie De Ocampo the sum of ₱54,600.00 representing her 13th Month Pay as compjted [sic] by the Examination and Computation Unit of this Arbitration Branch (See Annex "A", of this Arbitration Branch [sic]).

3. Directing the aforenamed respondent to pay complainant Melanie De Ocampo ten (10%) percent attorney's fees based on the total monetary award for having been forced to prosecute and/or litigate the instant case/complaint by hiring the services of legal counsel [sic].

4. Dismissing the claims for Holiday Pay and Service Incentive Leave Pay for lack of merit for the reasons above-cited.

5. Dismissing the other money claims and/or charges of complainant Melanie De Ocampo for lack of factual and legal basis.

6. Dismissing the charges against individual respondents Cerge Remonde, Rodolfo Lacuna, and Lourdes Angeles, as President, Manager of News and Current Affairs, and Manager of Human Resources, respectively, of respondent RPN-9 for lack of merit.

SO ORDERED.[11]

In its Decision[12] dated February 28, 2006, the National Labor Relations Commission affirmed the May 12, 2004 Decision of Executive Labor Arbiter Manansala. In the Resolution dated April 28, 2006, RPN-9's Motion for Reconsideration was denied.[13]

RPN-9 then filed before the Court of Appeals a Petition for Certiorari with prayer for temporary restraining order and/or preliminary injunction. The Petition was docketed as C.A.-G.R. SP. No. 95229.[14]

In the Resolution dated December 11, 2006, the Court of Appeals issued a temporary restraining order preventing the

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[11] *Id*. at 53-54.

[12] *Id*. at 56-70. The Decision was penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo of the Third Division. Commissioner Romeo C. Lagman took no part.

[13] *Id.* at 35, Court of Appeals Decision dated March 5, 2010.

[14] *Id*.

National Labor Relations Commission from enforcing its ruling for a period of 60 days. The sixty-day period lapsed without a writ of preliminary injunction being subsequently issued by the Court of Appeals.[15] Accordingly, the ruling of Executive Labor Arbiter Manansala, as affirmed by the National Labor Relations Commission, became final and executory on May 27, 2006.[16] Entry of Judgment was issued on July 19, 2006.[17]

De Ocampo then filed a Motion for Issuance of Writ of Execution.[18] In the Order[19] dated October 30, 2006, the National Labor Relations Commission granted De Ocampo's Motion. Conformably, a Writ of Execution[20] was issued on May 7, 2007. This Writ directed the Deputy Sheriff to collect from RPN-9 the total amount of ₱410,826.85.[21]

This amount was fully satisfied through Banco de Oro Check No. 0087385, which was deposited at the National Labor Relations Commission Cashier's Office on August 22, 2007.[22] On the following day, or on August 23, 2007, De Ocampo filed a Motion to Release the amount of ₱410,826.85.[23]

The full satisfaction of the original award notwithstanding, De Ocampo filed a Motion to Recompute the Monetary Award with Motion to Issue Alias Writ of Execution[24] on September

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[15] *Id*.

[16] *Id*. at 71.

[17] *Id*.

[18] *Id*. at 72, National Labor Relations Commission Order dated October 30, 2006.

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

[20] *Id*. at 74-77.

[21] *Id*. at 77.

[22] *Id*. at 35, Court of Appeals Decision dated March 5, 2010, and 78, Motion to Release.

[23] *Id*. at 78.

[24] *Id*. at 79-89.

11, 2007. In the Motion, De Ocampo sought the increase of the monetary award given her. Specifically, she sought the payment of an additional amount of ₱518,700.00 representing additional backwages, separation pay, and 13th month pay. She also prayed for an additional amount of ₱53,188.83, representing 12% interest per annum on the original monetary award.[25]

In the Order[26] dated December 13, 2007, Executive Labor Arbiter Manansala denied De Ocampo's Motion to Recompute the Monetary Award with Motion to Issue Alias Writ of Execution on the ground that the May 12, 2004 Decision fixing the amounts of the monetary award due to De Ocampo had become final and executory.

In its September 30, 2008 Decision,[27] the National Labor Relations Commission sustained Executive Labor Arbiter Manansala's December 13, 2007 Decision.[28] In its December 15, 2008 Resolution,[29] the National Labor Relations Commission denied De Ocampo's Motion for Reconsideration.

In its assailed March 5, 2010 Decision,[30] the Court of Appeals dismissed De Ocampo's Petition for Certiorari and sustained the September 30, 2008 Decision and December 15, 2008 Resolution of the National Labor Relations Commission. In its assailed July 8, 2010 Resolution,[31] the Court of Appeals denied De Ocampo's Motion for Reconsideration.

Aggrieved, De Ocampo filed the present Petition[32] insisting that she remains entitled to additional monetary awards, thereby warranting a recomputation of the amount due to her.

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[25] *Id*. at 87, Motion to Recompute the Monetary Award with Motion to Issue Alias Writ of Execution.

[26] *Id*. at 95-101.

[27] *Id*. at 207-215.

[28] *Id*. at 214, National Labor Relations Commission Decision dated September 30, 2008.

[29] *Id*. at 217-218.

[30] *Id*. at 33-39.

[31] *Id*. at 40.

[32] *Id*. at 11-29.

For resolution is the sole issue of whether petitioner Melanie De Ocampo may still seek a recomputation of and an increase in the monetary award given her.

She cannot.

I

It is basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory;[33] "[n]othing is more settled in law."[34] Once a case is decided with finality, "the controversy is settled and the matter is laid to rest."[35] Accordingly, a final judgment may no longer be modified in any respect "even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land."[36] Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose, is null and void.[37]

This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law."[38] Basic rationality dictates that there must be an end to litigation. Any contrary

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[33] *Industrial Timber Corp. v. Ababon,* 515 Phil. 805, 816 (2006) [Per *J.* Ynares-Santiago, First Division].

[34] *Filipro, Inc. v. Permanent Savings & Loan Bank,* 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division].

[35] *Siy v. National Labor Relations Commission,* 505 Phil. 265, 273 (2005) [Per *J.* Corona, Third Division].

[36] *Filipro, Inc. v. Permanent Savings & Loan Bank,* 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division]

[37] *Equatorial Realty Development v. Mayfair Theater,* Inc., 387 Phil. 885, 896 (2000) [Per *J.* Pardo, First Dvision].

[38] *Filipro, Inc. v. Permanent Savings & Loan Bank,* 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division].

posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case.[39]

This rule, however, does admit of exceptions. As this court explained in *Sacdalan v. Court of Appeals*:[40]

> The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[41] (Citations omitted)

Consistent with the principle of finality of judgments, it follows that no appeal may be taken from orders of execution of judgments.[42]

II

As basic as the principle of finality of judgments is the rule that filing a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."[43] Unlike an appeal, a pending petition for certiorari shall not stay the judgment or order that it assails.

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[39] *Id*.

[40] *Sacdalan v. Court of Appeals,* G.R. No. 128967, May 20, 2004, 428 SCRA 586 [Per *J*. Austria-Martinez, Second Division].

[41] *Id.* at 599.

[42] 1997 RULES OF CIV. PROC., Rule 41, Sec. 1(f) states:

> Section 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> . . . .
>
> (f) An order of execution;

[43] RULES OF COURT, Rule 65, Sec. 7.

The 2005 Rules of Procedure of the National Labor Relations Commission, which were in effect when the material incidents of this case occurred, explicitly and specifically makes this principle applicable to decisions of labor arbiters and of the National Labor Relations Commission. Rule XI, Section 10 of the 2005 Rules of Procedure of the National Labor Relations Commission states:

SECTION 10. *Effect of Petition for Certiorari on Execution.* — A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

In contrast, Rule XI, Section 9 states the following with respect to appeals:

SECTION 9. *Effect of Perfection of Appeal on Execution.* — The perfection of an appeal shall stay the execution of the decision of the Labor Arbiter on appeal, except execution for reinstatement pending appeal.

Accordingly, where no restraining order or writ of preliminary injunction is issued, the assailed decision lapses into finality. Thereafter, execution may ensue. As Rule XI, Section 1 of the 2005 Rules of Procedure of the National Labor Relations Commission states:

SECTION 1. *Execution Upon Finality of Decision or Order.* — a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that finally disposes of the action or proceedings after the parties and their counsels or authorized representatives are furnished with copies of the decision or order in accordance with these Rules, but only after the expiration of the period to appeal if no appeal has been filed, as shown by the certificate of finality. If an appeal has been filed, a writ of execution may be issued when there is an entry of judgment as provided for in Section 14 of Rule VII.

b) No motion for execution shall be entertained nor a writ of execution be issued unless the Labor Arbiter or the Commission is in possession of the records of the case which shall include an entry of judgment if the case was appealed; except that, as provided for in Section 14 of Rule V and Section 6 of this Rule, and in those cases

where partial execution is allowed by law, the Labor Arbiter shall retain duplicate original copies of the decision to be implemented and proof of service thereof for the purpose of immediate enforcement.

The pivotal facts of this case are also settled. After the filing before the Court of Appeals of RPN-9's Petition for Certiorari, the Court of Appeals issued a temporary restraining order preventing, for a period of 60 days, the National Labor Relations Commission from enforcing its ruling. However, the sixty-day period lapsed without a writ of preliminary injunction being subsequently issued by the Court of Appeals.[44] Thus, on May 27, 2006, the ruling of Executive Labor Arbiter Manansala, as affirmed by the National Labor Relations Commission, became final and executory on May 27, 2006.[45] Conformably, Entry of Judgment was made on July 19, 2006.[46]

None of the four exceptions mentioned in *Sacdalan v. Court of Appeals*[47] that warrant a modification of judgments that have attained finality is availing in this case.

What petitioner seeks is not a mere clerical correction. Rather, she seeks an overhaul of Executive Labor Arbiter Manansala's Decision in order that it may award her a total additional sum of ₱571,888.83 representing backwages, separation pay, 13th month pay, and accrued interest. Petitioner does not merely seek an entry into the records of acts done but not entered (i.e., *nunc pro tunc* entries). Petitioner does not claim that Executive Labor Arbiter Manansala's Decision is void, only that its computation of monetary awards is inadequate. Neither does petitioner allege that certain events transpired after May 27, 2006 rendering Executive Labor Arbiter Manansala's Decision unjust or inequitable.

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[44] *Rollo*, p. 35.

[45] *Id.* at 71.

[46] *Id.*

[47] *Sacdalan v. Court of Appeals,* G.R. No. 128967, May 20, 2004, 428 SCRA 586 [Per *J.* Austria- Martinez, Second Division].

The Decision having attained finality, and as this case does not fall under any of the recognized exceptional circumstances, there remains no opening for revisiting, amending, or modifying Executive Labor Arbiter Manansala's judgment.

III

Not only is Executive Labor Arbiter Manansala's Decision binding and conclusive as a matter of procedural law; it is as binding and conclusive on petitioner because of both her inaction and her own actions. She is estopped from seeking a modification of Executive Labor Arbiter Manansala's Decision.

Following the rendition of Executive Labor Arbiter Manansala's Decision on May 12, 2004, petitioner did not file a motion for reconsideration, pursue an appeal before the National Labor Relations Commission, file a petition for certiorari before any court, or otherwise assail the whole or any part of the Decision. This judgment, as well as its execution, was stayed not by petitioner's actions but by those of respondent RPN-9. RPN-9 filed an appeal before the National Labor Relations Commission and, following the denial of this appeal, filed a Rule 65 Petition before the Court of Appeals, where it sought preliminary injunctive relief.

By her inaction, petitioner made it appear that as far as she was concerned, Executive Labor Arbiter Manansala's Decision should have stood as it did. Her inaction revealed that she saw no reason for the same Decision to be revisited or reconsidered by Executive Labor Arbiter Manansala himself, by the National Labor Relations Commission, or by any court. She failed to act in a timely manner—that is, by pursuing the appropriate remedy within the duration permitted by the rules. She failed "to assert a right within a reasonable time, [and this] warrant[ed] a presumption that the party entitled to assert it [i.e., petitioner] either has abandoned it or declined to assert it."[48] Stated otherwise, to petitioner may be imputed estoppel by laches.

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[48] *Philippine National Construction Corporation v. National Labor Relations Commission,* 366 Phil. 678, 686 (1999) [Per *J.* Puno, Second Division].

Moreover, as soon as Entry of Judgment was made, petitioner filed a Motion for Issuance of Writ of Execution.[49] After the Writ of Execution was satisfied and the check representing payment of the monetary award was deposited with the Cashier's Office of the National Labor Relations Commission, petitioner lost no time in seeking to have the monetary award in her hands: just a day after deposit was made, petitioner was quick to file a Motion to Release the amount of ₱410,826.85.[50]

Accordingly, petitioner's willful acceptance of the judgment rendered by Executive Labor Manansala is not only something that may be implied from her omission or inaction. Rather, it is something explicitly affirmed by her own motions and submissions. Whatever doubt there was, if any, as to her concession to the monetary award given her was dispelled by the positive assertions and pleas for relief that petitioner herself made.

No recourse, whether in law or equity, leaves room for petitioner to avail herself of the modifications she seeks. The most basic legal principles dictate that Executive Labor Arbiter Manansala's Decision—in all its aspects—has long attained finality and may no longer be revisited. Principles of equity require that petitioner be bound by her own omissions and declarations.

WHEREFORE, the Petition for Review on Certiorari is **DENIED.** The assailed March 5, 2010 Decision and July 8, 2010 Resolution of the Court of Appeals Former Sixth Division in CA-G.R. SP No. 108457 are **AFFIRMED.**

SO ORDERED.

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

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[49] *Rollo*, p. 72.

[50] *Id.* at 78.

[*] Designated acting member per S. O. No. 2301 dated December 1, 2015.

THIRD DIVISION

[G.R. No. 197792. December 9, 2015]

CIVIL SERVICE COMMISSION, *petitioner*, *vs.* **MADLAWI B. MAGOYAG,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; RESORT TO RULE 43 OF THE RULES OF COURT WAS PROPER TO ASSAIL THE RESOLUTION OF THE CIVIL SERVICE COMMISSION; MERE RESPONSES TO A REQUEST ARE ACTUALLY QUASI-JUDICIAL ACTIONS SINCE IT WILL RESULT IN THE DENIAL OF RESPONDENT'S RIGHT.— It is true that only those awards, judgments, final orders or resolutions of a quasi-judicial agency or body in the exercise of its quasi-judicial functions are the subjects of an appeal under Rule 43 of the Rules of Court, however, in the present case, petitioner maintains that the resolutions it issued, subjects of the respondent's petition filed with the CA, were mere responses to the respondent's request for the correction of his date of birth, thus, petitioner did not exercise its judicial function. However, petitioner admits that in issuing those resolutions, it exercised its discretion. x x x This Court rules that the resolutions issued by petitioner are not mere responses to a request but are actually quasi-judicial actions because the result of those resolutions is the denial of a right of the respondent as conferred by the court. What makes it more unfortunate is that petitioner even admits on not having any investigations or hearings before issuing such resolutions. The first resolution denying the request was understandable since petitioner was not able to submit a certificate or proof of the finality of the RTC's judgment, but the second resolution denying the motion for reconsideration was unforgivable since the respondent was already able to cure the defect of its first request by attaching the Certificate of Finality of Judgment issued by the RTC. Thus, by denying respondent's request, petitioner was not merely exercising an administrative function but had already adjudicated on the matter. Therefore, the resort to Rule 43 was proper.

2. ID.; ACTIONS; A PETITION FOR CORRECTION OF DATE OF BIRTH IS AN ACTION *IN REM*; THE DECISION THEREIN BINDS NOT ONLY THE PARTIES BUT THE WHOLE WORLD.— It must be remembered that, a petition for correction is an action *in rem,* an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. An *in rem* proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. As such, petitioner is now legally bound to acknowledge and give effect to the judgment of the RTC.

3. ID.; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT, APPLIED.— [P]etitioner totally disregarded the finality of the RTC's judgment. x x x This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Kapunan Tamano Javier & Associates for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is to resolve the Petition for Review[1] dated September 12, 2011 of petitioner Civil Service Commission (CSC) assailing the Decision[2] dated May 12, 2011 of the Court of Appeals (CA) and the latter's Resolution[3] dated July 22, 2011 that directed the CSC to comply with the Decision of the Regional Trial Court (RTC) of Lanao del Sur, 12th Judicial Region, Branch 9, Marawi City ordering the correction of entry on the date of birth of respondent Madlawi B. Magoyag.

The facts follow.

Respondent filed with the RTC of Lanao del Sur, 12th Judicial Region, Marawi City, a petition for correction of his date of birth from July 22, 1947 to July 22, 1954. On November 20, 2007, the RTC granted the said petition. The dispositive portion of the decision reads as follows:

> WHEREFORE, the petition, being supported by evidence, is hereby granted and judgment is hereby rendered as follows:
>
> 1. The Government Service Insurance System is ordered to correct the entry of the date of Birth of petitioner with the latter's Membership with the system from July 22, 1947 to the correct date of birth of July 22, 1954 at Miondas, Tamparan, Lanao del Sur in conformity with his certificate of live birth; and
>
> 2. The Bureau of Customs at Cagayan de Oro Port, Cagayan de Oro City is likewise ordered to effect a correction in the entry of date of birth of petitioner Madlawi B. Magoyag from July 22, 1957 to that of July 22, 1954 in conformity with his delayed certificate of live birth.
>
> No cost.
>
> SO ORDERED.

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[1] *Rollo*, pp. 32-108.

[2] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Ramon A. Cruz, concurring; *rollo*, pp. 47-55.

[3] *Rollo*, pp. 17-18.

The RTC Decision was amended on June 2, 2008 to read as follows:

> The decision in the above-entitled case dated November 20, 2007 is hereby amended by further direction to the Local Civil Registrar of Tamparan, Lanao del Sur and the Civil Service Commission to immediately effect a correction of the entry of the live birth of petitioner in their records from July 22, 1947 to that of July 22, 1954 in conformity with the above decision.
>
> SO ORDERED.

Meanwhile, on February 6, 2008, respondent, who was then the Deputy Collector of the Bureau of Customs in Cagayan de Oro City requested the CSC Regional Office No. X to correct his date of birth appearing in his employment records from July 22, 1947 to July 22, 1954. The said request was then forwarded to the CSC-National Capital Region (NCR) in view of the unavailability in CSC Regional Office No. X of the records of employees of the Bureau of Customs and, thereafter, the request was endorsed to the CSC pursuant to CSC Resolution No. 04-0966 (MC. 20, s. 2004).

In support of his request, respondent submitted copies of his certificate of live birth issued by the National Statistics Office (NSO), together with the November 20, 2007 Decision of the RTC in the case entitled, "In the Matter of the Correction of Date of Birth Madlawi B. Magoyag," docketed as Special Proceeding Case No. 1716-07 and also presented the following documents:

1. Respondent's sworn affidavit attesting to his date of birth;

2. Photocopy of his late registration Certificate of Live Birth issued by the Local Civil Registrar of Tamparan, Lanao del Sur;

3. Joint Affidavit executed by Solaiman Basher and Monandato Palap attesting to respondent's date of birth;

4. Certified true copy of respondent's diploma, indicating that he graduated from the Central Philippine University, Iloilo City in 1967, with the degree of Bachelor of Science in Commerce;

5. Certified true copy of his Transcript of Records, issued on April 4, 2005 by the Office of the University Registrar, Liceo de Cagayan University, Cagayan de Oro City; and,

6. Certified true copy of the Special Order issued by the Bureau of Private Schools.

Respondent claims that the discrepancy in his date of birth arose when he applied for employment with Amanah Bank in 1974 when he mistakenly placed 1947 instead of 1954 as his year of birth in the application form. Thus, according to him, such wrong date appeared in the records of the GSIS and was maintained in the entire length of his stay in the government.

Petitioner CSC denied respondent's request on the ground that the RTC decision rendered on November 20, 2007 was not yet final and executory. The dispositive portion of CSC Resolution No. 090987 dated July 7, 2009, reads as follows:

> WHEREFORE, the request of Madlawi Magoyag, Collector of Customs II, Bureau of Customs, Department of Finance, Cagayan de Oro City that his date of birth appearing in the records of the Commission corrected from July 22, 1947 to July 22, 1954 is hereby DENIED.

Respondent filed a motion for reconsideration and attached to it was the Certificate of Finality of Judgment[4] issued by the RTC, but on March 16, 2010, the CSC, in its Resolution No. 100491, denied the said motion, thus:

> WHEREFORE, the motion for reconsideration of Madlawi M. Magoyag, Collector of Customs II, Bureau of Customs, Department of Finance, Cagayan de Oro City, is hereby DENIED. Accordingly, CSC Resolution No. 09-0987 dated July 7, 2009, is AFFIRMED IN ALL RESPECTS.

Aggrieved, respondent filed a Petition for Review under Rule 43 of the Rules of Court with the CA and the latter granted the petition and ordered the CSC to comply with the Decision of the RTC of Lanao del Sur, with the dispositive portion stating:

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[4] Issued on June 17, 2008, *rollo*, pp. 97-98.

WHEREFORE, in view of the foregoing premises, the instant petition is GRANTED. The Civil Service Commission is directed to comply with the Decision of the RTC of Lanao del Sur, 12th Judicial Region, Branch 9, Marawi City, in Spl. Proc. No. 1716-07.

SO ORDERED.

The motion for reconsideration having been denied by the CA, petitioner filed the present petition alleging the following grounds:

I.

RESOLUTION NOS. 090087 DATED 7 JULY 2009 AND 100491 DATED 16 MARCH 2010 ISSUED BY PETITIONER ARE NOT REVIEWABLE UNDER RULE 43 OF THE RULES OF COURT.

II.

ASSUMING ARGUENDO THAT THE CSC RESOLUTIONS ARE REVIEWABLE UNDER RULE 43, THE COURT *A QUO* ERRED IN ORDERING THE CSC TO COMPLY WITH THE RTC DECISION.

Petitioner argues that the resolutions it issued regarding the request of the respondent for the correction of his date of birth are mere responses to the said request and that although discretion was exercised by petitioner in denying the request, said exercise of discretion cannot be said to be judicial in nature because there were no investigations or hearings held to determine or ascertain the facts. Thus, according to the petitioner, the issuance of those resolutions was not the result of its quasi-judicial function, but of its administrative function only. As such, petitioner insists, respondent erred in resorting to Rule 43 of the Rules of Court when he elevated the case to the CA. Petitioner further reiterates that only those judgments, final orders or resolutions issued in the exercise of its quasi-judicial functions may be the subject of a petition for review under Rule 43.

Another argument raised by the petitioner is that, assuming that petitioner is legally bound to comply with the Decision dated November 20, 2007 and Order dated June 2, 2008 issued by the RTC, Branch 9 of Lanao del Sur, resort to the remedy

under Rule 43 to annul, reverse and set aside the questioned resolutions would be inappropriate because the resolutions being assailed by respondent before the CA are not the resolutions contemplated under Rule 43, the resolutions merely enforcing internal administrative policies and not adjudicating rights.

The petition is devoid of any merit.

Rule 43 of the Rules of Court under which respondent filed his petition before the CA applies to awards, judgments, final orders or resolutions of or authorized by any *quasi-judicial* agency in the exercise of its *quasi-judicial functions.*[5]

> A[n agency] is said to be exercising judicial function where[it] has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. x x x [6]

It is true that only those awards, judgments, final orders or resolutions of a quasi-judicial agency or body in the exercise of its quasi-judicial functions are the subjects of an appeal under Rule 43 of the Rules of Court, however, in the present case, petitioner maintains that the resolutions it issued, subjects of the respondent's petition filed with the CA, were mere responses to the respondent's request for the correction of his date of birth, thus, petitioner did not exercise its judicial function. However, petitioner admits that in issuing those resolutions, it exercised its discretion. In its petition, it stated:

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[5] RULES OF COURT, Rule 43, Sec. 1.

[6] *Tabigue, et al. v. International Copra Export Corporation (INTERCO),* 623 Phil. 866, 873(2009), citing *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission,* 543 Phil. 318, 329 (2007). (Emphasis in the original)

In the present recourse, Resolution Nos. 090087 dated 7 July 2009 and 100491 dated 16 March 2010 issued by petitioner which were questioned and subjected to the petition before the Court of Appeals (CA) Thirteenth Division culminated from a mere "request" of respondent for the correction of his date of birth in his records with petitioner. Said resolutions are no more than mere responses to the request of respondent for correction. **While discretion was exercised by petitioner in denying such request by respondent, said exercise of discretion cannot be said to be of judicial nature**. In acting on the request, no investigations or hearings were held to ascertain or determine the facts. No rights are adjudicated before it. Rather, respondent merely relied on the documents submitted by petitioner and acted in accordance with its existing internal policies and regulations. Clearly, the questioned resolutions of petitioner are issued NOT in the performance of its quasi-judicial function, but of its administrative function only. As such, the remedy of petition for review under Rule 43 of the Rules of Court is unavailing in this case.[7]

This Court rules that the resolutions issued by petitioner are not mere responses to a request but are actually quasi-judicial actions because the result of those resolutions is the denial of a right of the respondent as conferred by the court. What makes it more unfortunate is that petitioner even admits on not having any investigations or hearings before issuing such resolutions. The first resolution denying the request was understandable since petitioner was not able to submit a certificate or proof of the finality of the RTC's judgment, but the second resolution denying the motion for reconsideration was unforgivable since the respondent was already able to cure the defect of its first request by attaching the Certificate of Finality of Judgment issued by the RTC. Thus, by denying respondent's request, petitioner was not merely exercising an administrative function but had already adjudicated on the matter. Therefore, the resort to Rule 43 was proper.

In denying respondent's request, petitioner emphasized that it did not give weight to the certified photocopies of respondent's school records which he submitted to support his request because according to the Official Transcript of Records issued by the Office

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

of the University Registrar of Liceo de Cagayan University, respondent graduated from college in November 1967 which is manifestly improbable if respondent's claim that he was born on July 22, 1954 is true as it would mean that he graduated from college at the age of thirteen (13), from high school at nine (9), and from elementary at five (5). Such assumption should have merited an investigation and hearing if petitioner deemed such scenario as improbable because there are cases where such an instance is possible. Thus, petitioner's unsubstantiated presumption has led itself to go beyond its administrative function. Such concern should have been brought up in the proceedings of the RTC.

It must be remembered that, a petition for correction is an action *in rem,* an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. An *in rem* proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.[8] As such, petitioner is now legally bound to acknowledge and give effect to the judgment of the RTC.

However, petitioner totally disregarded the finality of the RTC's judgment. The Court re-emphasizes the doctrine of finality of judgment.

> It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it

[8] *Barco v. Court of Appeals*, 465 Phil. 39, 56-57 (2004).

may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or another to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.[9]

This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[10] It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice.[11]

Hence, based on the above disquisitions, the CA did not commit any reversible error in its questioned decision and resolution.

WHEREFORE, the Petition for Review dated September 12, 2011 of petitioner Civil Service Commission is **DENIED** for lack of merit. Consequently, the Decision dated May 12, 2011 of the Court of Appeals and the latter's Resolution dated July 22, 2011 are **AFFIRMED.**

SO ORDERED.

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

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[9] *Pasiona, Jr. v. Court of Appeals, et al.*, 581 Phil. 124, 132-133 (2008). (Citations and emphasis omitted).

[10] *Juani v. Alarcon*, 532 Phil. 585, 604 (2006).

[11] *Peña v. Government Service Insurance System*, 533 Phil. 670, 690 (2006).

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated December 7, 2015.

THIRD DIVISION

[G.R. No. 198270. December 9, 2015]

ARMILYN MORILLO,014 *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and RICHARD NATIVIDAD,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; VIOLATION OF BATAS PAMBANSA BLG. 22; CATEGORIZED AS TRANSITORY OR CONTINUING CRIME AND THE PERSON CHARGED WITH THE CRIME MAY BE VALIDLY TRIED IN ANY MUNICIPALITY OR TERRITORY WHERE THE OFFENSE WAS IN PART COMMITTED.—** It is well settled that violations of BP 22 cases are categorized as transitory or continuing crimes, meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.

2. **ID.; ID.; THE COURT OF THE PLACE WHERE THE CHECK WAS DEPOSITED OR PRESENTED FOR ENCASHMENT CAN BE VESTED WITH JURISDICTION TO TRY THE CASE.—** [T]here is no denying x x x that the court of the place where the check was deposited or presented for encashment can be vested with jurisdiction to try cases involving violations of BP 22. Thus, the fact that the check subject of the instant case was drawn, issued, and delivered in Pampanga does not strip off the Makati MeTC of its jurisdiction over the instant case for its undisputed that the subject check was deposited and presented for encashment at the Makati Branch of Equitable PCIBank. The MeTC of Makati, therefore, correctly took cognizance of the instant case and rendered its decision in the proper exercise of its jurisdiction.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE APPEAL ON THE CRIMINAL ASPECT OF THE CASE MUST BE INSTITUTED BY THE SOLICITOR GENERAL ON BEHALF OF THE STATE; EXCEPTION.— Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. Specifically, it shall represent the Government in all criminal proceedings before the Supreme Court and the Court of Appeals. Thus, as a general rule, if a criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General on behalf of the State. There have been instances, however, where the Court permitted an offended party to file an appeal without the invention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court, when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, when there is grave error committed by the judge, or when the interest of substantial justice so requires. x x x As to the issue of petitioner's legal standing to file the instant petition in the absence of the OSG's participation, the circumstances herein warrant the Court's consideration. In *Narciso v. Sta. Romana-Cruz*, the Court gave due regard to the ends of substantial justice by giving due course to a petition filed before it by the private offended party x x x. In a similar manner, the Court finds that in the interest of substantial justice, it must give due course to the instant petition and consequently rule on the merits of the same. The circumstances surrounding this case left petitioner with no other suitable recourse but to appeal the case herself. Not only was there an absence of support from the OSG, said government office also took a position in contrast to the rights and interests of petitioner. x x x Indeed, the unique and exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities under the law so as to prevent petitioner from suffering a grave injustice.

4. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF TO ASSAIL A

JUDGMENT OF ACQUITTAL WHEN IN ACQUITTING THE ACCUSED, THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION.— [A] judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting the aggrieved party's prayer is not tantamount to putting the accused in double jeopardy, in violation of the general rule that the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. This is because a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.

5. ID.; CRIMINAL PROCEDURE; CRIMINAL ACTIONS; THE DISMISSAL OF A CRIMINAL CASE AGAINST THE ACCUSED WILL NOT RESULT IN HIS ACQUITTAL EXCEPT IN A DISMISSAL BASED ON A DEMURRER TO EVIDENCE FILED BY THE ACCUSED OR FOR VIOLATION OF THE RIGHT OF THE ACCUSED TO SPEEDY TRIAL.— [T]he Court stresses that the appellate court's dismissal of the case is not an acquittal of respondent. Basic is the rule that a dismissal of a case is different from an acquittal of the accused therein. Except in a dismissal based on a Demurrer to Evidence filed by the accused, or for violation of the right of the accused to a speedy trial, the dismissal of a criminal case against the accused will not result in his acquittal. x x x [W]hen the appellate court herein dismissed the instant case on the ground that the MeTC lacked jurisdiction over the offense charged, it did not decide the same on the merits, let alone resolve the issue of respondent's guilt or innocence based on the evidence proffered by the prosecution. The appellate court merely dismissed the case on erroneous reasoning that none of the elements of BP 22 was committed within the lower court's jurisdiction, and not because of any finding that the evidence failed to show respondent's guilt beyond reasonable doubt. Clearly, therefore, such dismissal did not operate as an acquittal, which x x x may be repudiated only by a petition for *certiorari* under Rule 65 of the Rules of Court showing a grave abuse of discretion.

6. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; A QUESTION INVOLVING THE PROPER INTERPRETATION OF THE RULES AND JURISPRUDENCE WITH RESPECT TO THE JURISDICTION OF COURTS TO ENTERTAIN COMPLAINTS FILED WITH IT IS A QUESTION OF LAW.— [P]etitioner's resort to Rule 45 of the Rules of Court cannot be struck down as improper. In a petition for review on *certiorari* under Rule 45, the parties raise only questions of law because the Court, in its exercise of its power of review, is not a trier of facts. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. x x x In the instant case, the lone issue invoked by petitioner is precisely "whether the Court of Appeals erred when it ruled that the Metropolitan Trial Court of Makati City did not have jurisdiction over the case despite clear showing that the offense was committed within the jurisdiction of said court." Evidently, therefore, the instant petition was filed within the bounds of our procedural rules for the issue herein rests solely on what the law provides on the given set of circumstances insofar as the commission of the crime of BP 22 is concerned. In criminal cases, the jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the complaint or Information, and the penalty provided by law for the crime charged at the time of its commission. Thus, when a case involves a proper interpretation of the rules and jurisprudence with respect to the jurisdiction of courts to entertain complaints filed therewith, it deals with a question of law that can be properly brought to this Court under Rule 45.

7. POLITICAL LAW ; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; A VIOLATION THEREOF CANNOT BE CLAIMED WHEN THE DISMISSAL OF THE CASE CANNOT BE CONSIDERED AS AN ACQUITTAL.— [S]ince the dismissal of the instant case cannot be considered as an acquittal of respondent herein, he cannot likewise claim that his constitutional right to protection against double

jeopardy will be violated. In *Paulin v. Hon. Gimenez*, the Court held: "Jurisprudence on double jeopardy as well as the exceptions thereto which finds application to the case at bar has been laid down by this Court as follows: …**However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent of the defendant; (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant."** A cursory review of the records would readily reveal the presence of the foregoing requisites. *First,* as early as the stage of respondent's appeal of the MeTC's decision to the RTC, respondent had already been moving for the dismissal of the case alleging the ground of lack of jurisdiction. Accordingly, the CA's dismissal on said ground can rightly be considered to have been with respondent's express consent. *Second,* x x x the dismissal herein is not an acquittal or based upon a consideration of the merits. *Third*, the question raised in this case is based purely on a question of law. In view therefore of the presence of all three requisites, the Court finds that petitioner's appeal of the appellate court's dismissal cannot be barred by double jeopardy.

8. REMEDIAL LAW; RULES OF PROCEDURE; SHOULD BE LIBERALLY CONSTRUED AS LONG AS THEIR PURPOSE IS SUFFICIENTLY MET AND THERE WAS NO VIOLATION OF DUE PROCESS.— [W]hen there exists meritorious grounds to overlook strict procedural matters, the Court cannot turn a blind eye thereto lest the administration of justice be derailed by an overly stringent application of the rules. Rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings. Strict adherence thereto must not get in the way of achieving substantial justice. As long as their purpose is sufficiently met and no violation of due process and fair play takes place, the rules should be liberally construed. Dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought

not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

APPEARANCES OF COUNSEL

Fortun Narvasa and Salazar for petitioner.
The Solicitor General for public respondent.
Sheryl C. Santos-Centeno for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated January 18, 2011 and Resolution[2] dated August 9, 2011 of the Court of Appeals (*CA*) in CA-G.R. CR No. 32723 which reversed and set aside the Decision[3] dated February 23, 2009 and Order[4] dated July 13, 2009, of the Regional Trial Court (*RTC*) in Criminal Case Nos. 08-1876-77, which, in turn, affirmed the Joint Decision[5] dated September 3, 2008 of the Metropolitan Trial Court (*MeTC*) in Criminal Case Nos. 337902-03.

The antecedent facts are as follows:

Sometime in July 2003, respondent Richard Natividad, Milo Malong and Bing Nanquil, introducing themselves as contractors

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring; *rollo*, pp. 31-43.

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

[3] Penned by Judge Maryann E. Corpus-Mañalac; *id*. at 76-81.

[4] *Id*. at 93.

[5] Penned by Judge Carlito B. Calpatura; *id.* at 68-74.

doing business in Pampanga City under the name and style of RB Custodio Construction, purchased construction materials for their project inside the Subic Freeport Zone from petitioner Armilyn Morillo, owner of Amasea General Merchandize and Construction Supplies. The parties agreed that twenty percent (20%) of the purchases shall be paid within seven (7) days after the first delivery and the remaining eighty percent (80%) to be paid within thirty-five (35) days after the last delivery, all of which shall be via post-dated checks.[6]

Pursuant to the agreement, petitioner delivered construction materials amounting to a total of ₱500,054.00 at the construction site where respondent and his partners were undertaking their project. After the last delivery, respondent paid ₱20,000.00 in cash and issued two (2) post-dated checks, drawn from Metrobank, Pampanga branch, in the amounts of ₱393,000.00 and ₱87,054.00. Upon maturity, petitioner attempted to deposit the checks in her savings account at Equitable PCIBank, San Lorenzo, Makati City. They were, however, dishonored by the drawee bank. Immediately thereafter, petitioner communicated the dishonor to respondent and his partners and demanded for payment. Again, respondent issued two (2) post-dated Metrobank checks and assured petitioner that they will be honored upon maturity. Upon deposit in her savings account at Equitable PCIBank, Makati Branch, the checks were once again dishonored for the reason that the account from which they were drawn was already a closed account. Consequently, petitioner made several demands from respondent and his partners, but to no avail, prompting her to file a complaint with the City Prosecution Office, Makati City.[7] Thus, on August 12, 2004, two (2) Informations were filed against respondent and Milo Malong, the accusatory portions of which read:

Criminal Case No. 337902

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the

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[6] *Id*. at 34.

[7] *Id*.

jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

Check No.	: 2960203217
Drawn Against	: Metrobank
In the amount	: Php434,430.00
Postdated / Dated	: October 20, 2003
Payable to	: AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.

Criminal Case No. 337903

That on or about the 20th day of October 2003, or prior thereto, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously make out, draw and issue to AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES herein represented by ARMILYN MORILLO to apply on account or for value the check described below:

Check No.	: 2960203218
Drawn Against	: Metrobank
In the amount	: Php13,032.00
Postdated / Dated	: October 20,2003
Payable to	: AMASEA GENERAL MERCHANDIZE AND CONSTRUCTION SUPPLIES

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment which check when presented for payment within ninety (90) days from the date thereof, was subsequently dishonored by the drawee bank for the reason "Account Closed" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.[8]

On September 15, 2004, the Assistant City Prosecutor issued a Resolution recommending that respondent and his partners be charged in court with the crime of Estafa under Article 315, paragraph 2(d) of the Revised Penal Code as well as for Violation of Batas Pambansa No. 22 (*BP 22*), which was later docketed as Criminal Case Nos. 337902-03.

On September 3, 2008, the MeTC rendered its Joint Decision, finding that the prosecution had proven all the elements of violation of BP 22 as against respondent, the dispositive portion of which reads:

WHEREFORE, judgment is rendered in Criminal Cases Nos. 337902-03 finding the accused, RICHARD NATIVIDAD, GUILTY beyond reasonable doubt of the offense of Violation of Batas Pambansa Blg. 22 and is sentenced to pay a fine equivalent to Two Hundred Thousand Pesos (Php200,000.00), for Check No. 2960203217 and Thirteen Thousand Thirty-Two Pesos for Check No. 2960203218 or a total penalty of Two Hundred Thousand Thirteen Thousand Thirty Two Pesos (Php213,032.00), with subsidiary imprisonment in case of insolvency. However, accused MILO MALONG, is ACQUITTED on the ground of reasonable doubt. Both accused Malong and Natividad are ordered to jointly pay the private complainant the total sum of Four Hundred Forty-Seven Thousand Four Hundred Sixty-Two Pesos (Php447,462.00) which are the face value of the two (2) checks issued, subject of these cases, with interest at twelve percent (12%) per annum and three percent (3%) penalty per month as stipulated in the invoices, reckoned from the date of receipt of the demand on February 28, 2004, until the amount is fully paid, plus the costs of suit.

[8] *Id*. at 32-33.

All other claims are DISMISSED for lack of evidence.

SO ORDERED.[9]

Respondent appealed the decision of the MeTC to the RTC arguing that the MeTC of Makati City had no jurisdiction over the case. He asserted that since the subject checks were issued, drawn, and delivered to petitioner in Subic, the venue of the action was improperly laid for none of the elements of the offense actually transpired in Makati City. Respondent also pointed out that during the retaking of petitioner's testimony on March 14, 2008, the records of the case did not show that the public prosecutor manifested his presence in court and that he delegated the prosecution of the case to the private prosecutor. Thus, since there was no appearance for the public prosecutor, nor was there a proper delegation of authority, the proceedings should be declared null and void.[10]

On February 23, 2009, the RTC affirmed the MeTC ruling in the following wise:

Since accused Natividad failed to raise before the court [*a quo*] the issue of authority of the private prosecutor to present witness Morillo in the absence of the public prosecutor during the March 14, 2008 proceeding, and only did so after obtaining an adverse judgment, it would be an injustice if all the proceedings had in the case would be set aside.

The second issue raised on appeal also holds no ground. A violation of BP 22 is a continuing or transitory offense, which is oft-repeated in our jurisprudence. Under this doctrine, jurisdiction may be had in several places where one of the acts material to the crime occurred.

Accused Natividad postulates that since the checks were presented and dishonored in Makati City, which is not the place where it was issued and delivered, the court [*a quo*] lacks jurisdiction. This argument is, at best, specious. The fact remains that the bank where it was presented for payment is in Makati City. These checks passed

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[9] *Id*. at 73-74.

[10] *Id*. at 36.

through this bank for clearance, confirmation, and or validation processes. Moreover, the eventual dishonour indeed took place or was completed at the end of the collecting bank in Makati City, where the private complainant maintains her account over which the court [*a quo*] has jurisdiction.

WHEREFORE, finding no merit on accused-appellant Natividad's appeal, the same is hereby dismissed. Accordingly, the appealed decision of the court [*a quo*] is hereby AFFIRMED in full.

SO ORDERED.[11]

On appeal, however, the Court of Appeals, in its January 18, 2011 Decision, reversed the lower courts' rulings and dismissed the case without prejudice to its refiling in the proper venue, the pertinent portions of said Decision state:

In this case, records will reveal that the first element of the offense happened in Pampanga. It was indisputably established that the subject checks were issued to private complainant at petitioner's office in Pampanga. Said checks were drawn from petitioner's account in Metrobank, Pampanga branch.

The second element of the offense or the knowledge of dishonor of the checks by the maker also transpired in Pampanga. After private complainant was informed of the dishonor of the checks, she immediately proceeded to petitioner's office in Pampanga, personally informed him and his companions of the dishonor of the checks and tendered a demand letter for the payment of the construction materials.

Finally, the third element or dishonor of the checks by the drawee bank also happened in Pampanga. Upon maturity of the subject checks, private complainant deposited the same in her savings account at Equitable PCIBank, Makati Branch. Subsequently, she was informed by the latter bank that the subject checks were dishonored by the drawee bank, Metrobank, Pampanga branch.

Clearly, all the essential elements of the offense happened in Pampanga. Consequently, the case can only be filed in said place. Unfortunately, private complainant filed the case in Makati City, under the erroneous assumption that since she deposited the subject checks in Equitable PCIBank, Makati City, and was informed of

[11] *Id*. at 80-81. (Emphasis ours)

the dishonor of the checks by the same bank, the case may be filed in Makati City. However, as correctly argued by the OSG, the act of depositing the check is not an essential element of BP 22. Likewise, the fact that private complainant was informed of the dishonor of the checks at her bank in Makati City did not vest the MeTC, Makati City with jurisdiction to take cognizance of the case. To reiterate, a transitory crime can only be filed in any of the places where its constitutive elements actually transpired. And, knowledge of the payee of the dishonor of the checks is not an element of BP 22. The law speaks only of the subsequent dishonor of the checks by the drawee bank and the knowledge of the fact of dishonor by the maker. Consequently, none of the elements of the offense can be considered to have transpired in Makati City. Thus, the venue of the instant case was improperly laid.[12]

Aggrieved, petitioner filed the instant action invoking the following argument:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE METROPOLITAN TRIAL COURT OF MAKATI CITY DID NOT HAVE JURISDICTION OVER THE CASE DESPITE A CLEAR SHOWING THAT THE OFFENSE WAS COMMITTED WITHIN THE JURISDICTION OF SAID COURT.[13]

Petitioner maintains that the MeTC of Makati City, the place where the dishonored checks were deposited, had jurisdiction over the instant case. In support of her contention, petitioner cites the ruling in *Nieva, Jr. v. Court of Appeals*,[14] wherein it was held that since the check drawn in violation of BP 22 was deposited and presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands, the RTC of Pampanga clearly had jurisdiction over the crime of which accused therein was charged.[15] Thus, petitioner asserts that

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[12] *Id.* at 40-41.

[13] *Id.* at 18.

[14] 338 Phil. 529 (1997).

[15] *Nieva, Jr. v. Court of Appeals, supra,* at 541.

the appellate court erred in ruling that the Makati MeTC did not have jurisdiction to try the instant case. That none of the essential elements of the crime of violation of BP 22 occurred in the City of Makati is belied by the *Nieva* doctrine recognizing the jurisdiction of the court of the place where the check was deposited and/or presented for encashment.

Petitioner went on to state that all the elements of violation of BP 22 were duly proven beyond reasonable doubt. First, the prosecution sufficiently established that the respondent issued the subject checks as shown by the documentary evidence submitted. They were issued for value, as payment for the construction supplies and materials which petitioner delivered to the accused.

As to the second and third elements, petitioner posits that it was clearly shown that respondent had knowledge of the insufficiency of funds in or credit with the drawee bank, which subsequently dishonored the subject checks. Section 2 of BP 22 provides that "the dishonor of a check when presented within ninety (90) days from the date of the check shall be *prima facie* evidence of knowledge of insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee." In this case, petitioner states that the prosecution was able to sufficiently show that the subject checks were presented within the time period required by law. In fact, written demand relaying the fact that the drawee bank dishonored the subject checks was even personally delivered by petitioner to respondent as evidenced by the demand letter signed by respondent. Thus, respondent cannot deny that he had knowledge of the insufficiency of funds in his account with the drawee bank and that the subject checks were subsequently dishonored for the reason that the account from which they were drawn was already a closed account.

For its part, the Office of the Solicitor General (*OSG*), representing the State, is in line with the appellate court's and

respondent's stance that the MeTC had no jurisdiction over the instant case. According to the OSG, the act of depositing the check is not an essential element of the offense under the Bouncing Checks Law. Citing the ruling in *Rigor v. People*,[16] the OSG posited that the place of deposit and the place of dishonor are distinct from each other and that the place where the check was issued, delivered, and dishonored is the proper venue, not the place where the check was deposited, *viz.*:

> The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila. xxx The check was deposited with PS Bank, San Juan Branch, Metro Manila. xxx The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. Although the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in San Juan are triable by the RTC stationed in Pasig.[17]

On the basis of the pronouncement in *Rigor*, the OSG thus claimed that the MeTC of Makati City did not have jurisdiction over the instant case for none of the essential elements of violation of BP 22 occurred therein.

The contention is untenable.

It is well settled that violations of BP 22 cases are categorized as transitory or continuing crimes, meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person

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[16] 485 Phil. 125, (2004).

[17] *Rollo*, pp. 204-205. (Emphasis omitted)

charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[18]

The OSG, relying on our ruling in *Rigor v. People,* concluded that "the Supreme Court regarded the place of deposit and the place of dishonor as distinct from one another and considered the place where the check was issued, delivered and dishonored, and not where the check was deposited, as the proper venue for the filing of a B.P. Blg. 22 case." The Court, however, cannot sustain such conclusion.

In said case, the accused therein obtained a loan from the Rural Bank of San Juan, Metro Manila, and in payment thereof, he issued a check drawn against Associated Bank of Tarlac. Thereafter, Rural Bank deposited the check at PS Bank, San Juan, but the same was returned for the reason that it had been dishonored by Associated Bank of Tarlac. When all other efforts to demand the repayment of the loan proved futile, Rural Bank filed an action against the accused for violation of BP 22 at the RTC of Pasig City, wherein crimes committed in San Juan are triable. The accused, however, contends that the RTC of Pasig had no jurisdiction thereon since no proof had been offered to show that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan. The Court, however, disagreed and held that while the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, evidence clearly showed that the accused had drawn, issued and delivered it at Rural Bank, San Juan, *viz.*:

> Lastly, petitioner contends that the Regional Trial Court of Pasig had no jurisdiction over this case since no proof has been offered that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan, Metro Manila.

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[18] *Yalong v. People*, G.R. No. 187174, August 28, 2013, 704 SCRA 195, 205; citing *Rigor v. People*, *supra* note 16, at 138.

The contention is untenable.

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The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila on November 16, 1989, and subsequently the check was dated February 16, 1990 thereat. On May 25, 1990, the check was deposited with PS Bank, San Juan Branch, Metro Manila. Thus, the Court of Appeals correctly ruled:

> Violations of B.P. 22 are categorized as transitory or continuing crimes. A suit on the check can be filed in any of the places where any of the elements of the offense occurred, that is, where the check is drawn, issued, delivered or dishonored. x x x
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> **The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. Although, the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in November, 1989 in San Juan are triable by the RTC stationed in Pasig. In short both allegation and proof in this case sufficiently vest jurisdiction upon the RTC in Pasig City.**[19]

The bone of contention in *Rigor*, therefore, was whether the prosecution had offered sufficient proof that the check drawn in violation of BP 22 was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan, thereby vesting jurisdiction upon the RTC of Pasig City. Nowhere in the cited case, however, was it held, either expressly or impliedly, that the place where the check was deposited is not the proper venue for actions involving violations of BP 22. It is true that the Court, in *Rigor*, acknowledged the fact that the check was issued and delivered at the Rural Bank of San Juan while the same was deposited with the PS Bank

[19] *Rigor v. People, supra* note 16.

of San Juan. But such differentiation cannot be taken as basis sufficient enough to conclude that the court of the place of deposit cannot exercise jurisdiction over violations of BP 22. In the absence, therefore, of any ground, jurisprudential or otherwise, to sustain the OSG's arguments, the Court cannot take cognizance of a doctrine that is simply inapplicable to the issue at hand.

In contrast, the ruling in *Nieva, Jr. v. Court of Appeals*[20] cited by petitioner is more squarely on point with the instant case. In *Nieva*, the accused delivered to Ramon Joven a post-dated check drawn against the Commercial Bank of Manila as payment for Joven's dump truck. Said check was deposited in the Angeles City Branch of the Bank of Philippine Islands. Joven was advised, however, that the Commercial Bank of Manila returned the check for the reason that the account against which the check was drawn is a "closed account." Consequently, the accused was charged with violation of BP 22 before the RTC of Pampanga. On the contention of the accused that said court had no jurisdiction to try the case, the Court categorically ruled:

> **As to petitioner's contention that the Regional Trial Court of Pampanga has no jurisdiction to try the cases charged herein as none of the essential elements thereof took place in Pampanga, suffice it to say that such contention has no basis. The evidence discloses that the check was deposited and/or presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands. This fact clearly confers jurisdiction upon the Regional Trial Court of Pampanga over the crimes of which petitioner is charged**. It must be noted that violations of B.P. Blg. 22 are categorized as transitory or continuing crimes and so is the crime of estafa. The rule is that a person charged with a transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[21]

In fact, in the more recent *Yalong v. People*,[22] wherein the modes of appeal and rules of procedure were the issues at hand, the Court similarly inferred:

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[20] *Supra* note 14.

[21] *Nieva, Jr. v. Court of Appeals, supra* note 14, at 3-14. (Emphasis ours)

[22] *Supra* note 18.

Besides, even discounting the above-discussed considerations, Yalong's appeal still remains dismissible on the ground that, *inter alia*, the MTCC had properly acquired jurisdiction over Criminal Case No. 45414. It is well-settled that violation of BP 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed. Applying these principles, a criminal case for violation of BP 22 may be filed in any of the places where any of its elements occurred – in particular, the place where the check is drawn, issued, delivered, or dishonored.

In this case, while it is undisputed that the subject check was drawn, issued, and delivered in Manila, records reveal that Ylagan presented the same for deposit and encashment at the LBC Bank in Batangas City where she learned of its dishonor. As such, the MTCC [of Batangas City] correctly took cognizance of Criminal Case No. 45414 as it had the territorial jurisdiction to try and resolve the same. In this light, the denial of the present petition remains warranted.[23]

Guided by the foregoing pronouncements, there is no denying, therefore, that the court of the place where the check was deposited or presented for encashment can be vested with jurisdiction to try cases involving violations of BP 22. Thus, the fact that the check subject of the instant case was drawn, issued, and delivered in Pampanga does not strip off the Makati MeTC of its jurisdiction over the instant case for it is undisputed that the subject check was deposited and presented for encashment at the Makati Branch of Equitable PCIBank. The MeTC of Makati, therefore, correctly took cognizance of the instant case and rendered its decision in the proper exercise of its jurisdiction.

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[23] *Yalong v. People, supra* note 18, at 205. (Emphasis ours)

It may be argued, however, that the instant petition ought to be dismissed outright due to certain procedural infirmities. Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. Specifically, it shall represent the Government in all criminal proceedings before the Supreme Court and the Court of Appeals.[24] Thus, as a general rule, if a criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General on behalf of the State.[25]

There have been instances, however, where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court,[26] when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice

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[24] Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides:

Section 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

[25] *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 64.

[26] *Heirs of Delgado, et al. v. Gonzalez*, 612 Phil. 817, 844 (2009), citing *People v. Judge Santiago*, 255 Phil. 851 (1989).

of the State and the private offended party,[27] when there is grave error committed by the judge, or when the interest of substantial justice so requires.[28]

Corollary, a judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting the aggrieved party's prayer is not tantamount to putting the accused in double jeopardy,[29] in violation of the general rule that the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. This is because a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.[30]

Thus, it may be argued that since the instant petition is one for review on *certiorari* under Rule 45 of the Rules of Court, not under Rule 65, and was not filed by the OSG representing the interest of the Republic, the same should be summarily dismissed. The unique and special circumstances attendant in the instant petition, however, justify an adjudication by the Court on the merits and not solely on technical grounds.

First of all, the Court stresses that the appellate court's dismissal of the case is not an acquittal of respondent. Basic is the rule that a dismissal of a case is different from an acquittal of the accused therein. Except in a dismissal based on a Demurrer

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[27] *Id.*

[28] *Anlud Metal Recycling Corporation, etc. v. Joaquin Ang*, G.R. No. 182157, August 17, 2015, citing *Cariño v. De Castro*, 576 Phil. 634 (2008).

[29] *People of the Philippines and AAA v. Court of Appeals, 21st Division, Mindanao Station*, *et al.,* G.R. No. 183652, February 25, 2015.

[30] *Id*.

to Evidence filed by the accused, or for violation of the right of the accused to a speedy trial, the dismissal of a criminal case against the accused will not result in his acquittal.[31] In the oft-cited *People v. Salico*,[32] the Court explained:

> This argument or reasoning is predicated on a confusion of the legal concepts of dismissal and acquittal. **Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc.** The only case in which the word dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. **If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case, the defendant may again be prosecuted for the same offense before a court of competent jurisdiction.**[33]

Thus, when the appellate court herein dismissed the instant case on the ground that the MeTC lacked jurisdiction over the offense charged, it did not decide the same on the merits, let alone resolve the issue of respondent's guilt or innocence based on the evidence proffered by the prosecution.[34] The appellate

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[31] *People v. Sandiganbayan,* 482 Phil. 613, 632 (2004).

[32] 84 Phil. 722 (1949).

[33] *People v. Salico, supra*, at 732-733. (Emphasis ours)

[34] *Consino v. People of the Philippines*, G.R. No. 200465, April 20, 2015.

court merely dismissed the case on the erroneous reasoning that none of the elements of BP 22 was committed within the lower court's jurisdiction, and not because of any finding that the evidence failed to show respondent's guilt beyond reasonable doubt. Clearly, therefore, such dismissal did not operate as an acquittal, which, as previously discussed, may be repudiated only by a petition for *certiorari* under Rule 65 of the Rules of Court showing a grave abuse of discretion.

Thus, petitioner's resort to Rule 45 of the Rules of Court cannot be struck down as improper. In a petition for review on *certiorari* under Rule 45, the parties raise only questions of law because the Court, in its exercise of its power of review, is not a trier of facts. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants.[35] In *De Vera v. Spouses Santiago*,[36] the Court categorically ruled that the issue of whether the appellate court erred in annulling the RTC Decision for lack of jurisdiction is a question of law, to wit:

> **Undeniably, the issue whether the CA erred in annulling the RTC Decision for lack of jurisdiction is a question of law. The resolution of such issue rests solely on what the law [B.P. Blg. 129, as amended] provides on the given set of circumstances as alleged in petitioners' complaint for reconveyance of ownership and possession with damages.**[37]

In the instant case, the lone issue invoked by petitioner is precisely "whether the Court of Appeals erred when it ruled that the Metropolitan Trial Court of Makati City did not have jurisdiction over the case despite clear showing that the offense was committed within the jurisdiction of said court." Evidently, therefore, the instant petition was filed within the bounds of our

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[35] *De Vera, et al. v. Spouses Santiago, et al.,* G.R. No. 179457, June 22, 2015, citing *Samson v. Spouses Gabor, et al.*, G.R. No. 182970, July 23, 2014, 730 SCRA 490, 497.

[36] *Supra.*

[37] *De Vera v. Spouses Santiago, supra* note 35. (Emphasis ours)

procedural rules for the issue herein rests solely on what the law provides on the given set of circumstances insofar as the commission of the crime of BP 22 is concerned. In criminal cases, the jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the complaint or Information, and the penalty provided by law for the crime charged at the time of its commission.[38] Thus, when a case involves a proper interpretation of the rules and jurisprudence with respect to the jurisdiction of courts to entertain complaints filed therewith, it deals with a question of law that can be properly brought to this Court under Rule 45.[39]

More importantly, moreover, since the dismissal of the instant case cannot be considered as an acquittal of respondent herein, he cannot likewise claim that his constitutional right to protection against double jeopardy will be violated. In *Paulin v. Hon. Gimenez*,[40] the Court held:

> Jurisprudence on double jeopardy as well as the exceptions thereto which finds application to the case at bar has been laid down by this Court as follows:
>
> > . . . **However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent of the defendant; (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant**.[41]

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[38] *Consino v. People, supra* note 34, citing *Guinhawa v. Peopl*e, 505 Phil. 383, 401-402 (2005).

[39] *Padilla v. Globe Asiatique Realty Holdings Corporation*, G.R. No. 207376, August 6, 2014, 732 SCRA 416, 431.

[40] G.R. No. 103323, January 21, 1993, 217 SCRA 386.

[41] *Paulin v. Hon. Gimenez*, *supra,* at 390, citing *People v. Hon. Villalon,* 270 Phil. 637, 645 (1990). (Emphasis ours)

A cursory review of the records would readily reveal the presence of the foregoing requisites. *First*, as early as the stage of respondent's appeal of the MeTC's decision to the RTC, respondent had already been moving for the dismissal of the case alleging the ground of lack of jurisdiction. Accordingly, the CA's dismissal on said ground can rightly be considered to have been with respondent's express consent. *Second*, as earlier mentioned, the dismissal herein is not an acquittal or based upon a consideration of the merits. *Third*, the question raised in this case is based purely on a question of law. In view therefore of the presence of all three requisites, the Court finds that petitioner's appeal of the appellate court's dismissal cannot be barred by double jeopardy.

As to the issue of petitioner's legal standing to file the instant petition in the absence of the OSG's participation, the circumstances herein warrant the Court's consideration. In *Narciso v. Sta. Romana-Cruz*,[42] the Court gave due regard to the ends of substantial justice by giving due course to a petition filed before it by the private offended party, *viz.*:

> Citing the "ends of substantial justice," *People v. Calo*, however, provided an exception to the above doctrines in this manner:
>
> > While the rule is, as held by the Court of Appeals, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceedings pending in this Court and the Court of Appeals (Republic vs. Partisala, 118 SCRA 320 [1982]**), the ends of substantial justice would be better served, and the issues in this action could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private petitioner's) father.**
>
> xxx xxx xxx

[42] 385 Phil. 208 (2000).

The ends of substantial justice indeed require the affirmation of the appellate court's ruling on this point. Clearly, the assailed Order of Judge Santiago was issued in grave abuse of discretion amounting to lack of jurisdiction. A void order is no order at all. It cannot confer any right or be the source of any relief. This Court is not merely a court of law; it is likewise a court of justice.

To rule otherwise would leave the private respondent without any recourse to rectify the public injustice brought about by the trial court's Order, leaving her with only the standing to file administrative charges for ignorance of the law against the judge and the prosecutor. A party cannot be left without recourse to address a substantive issue in law.[43]

In a similar manner, the Court finds that in the interest of substantial justice, it must give due course to the instant petition and consequently rule on the merits of the same. The circumstances surrounding this case left petitioner with no other suitable recourse but to appeal the case herself. Not only was there an absence of support from the OSG, said government office also took a position in contrast to the rights and interests of petitioner. Moreover, as discussed above, the arguments which ran counter to petitioner's interest as well as the grounds used to support them were simply inapplicable to the issue at hand. In fact, these erroneous contentions were adopted by the appellate court in their entirety, dismissing the instant case in a manner not in accord with law and applicable jurisprudence. For the Court, now, to apply procedural rules in their strict and literal sense by similarly dismissing, as the CA had, petitioner's action poses serious consequences tantamount to a miscarriage of justice. To rule that the accused can postpone criminal prosecution and delay the administration of justice at petitioner's expense on the erroneous ground of lack of jurisdiction would create a hazardous precedent and open loopholes in our criminal justice system.[44]

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[43] *Narciso v. Sta. Romana-Cruz, supra*, at 222-223, citing *People v. Calo, Jr.*, 264 Phil. 1007, 1012-1013 (1990).

[44] See Separate Concurring Opinion, Associate Justice Arturo D. Brion in *De la Cuesta v. Sandiganbayan*, *First Division,* G.R. Nos. 164068-69, November 19, 2013, 709 SCRA 631, 673.

Indeed, the unique and exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities under the law so as to prevent petitioner from suffering a grave injustice. As disclosed by the records, petitioner had already fulfilled her end of the agreement in giving respondent, as early as in the year 2003, construction materials amounting to half a million pesos and yet up until now, she has not been paid therefor. In fact, after having sufficiently proven to the satisfaction of both the MeTC and the RTC her right allegedly violated by respondent, the CA simply dismissed, albeit without prejudice to the re-filing of the case with the appropriate court, her action for the incorrect ground of wrong venue. On the mistaken reasoning that the MeTC of Makati City did not have jurisdiction over the instant case, the CA, without providing any legal or jurisprudential basis, would have petitioner start from the very beginning and re-file her complaint before the same court which already had jurisdiction in the first place.

Thus, when there exists meritorious grounds to overlook strict procedural matters, the Court cannot turn a blind eye thereto lest the administration of justice be derailed by an overly stringent application of the rules.[45] Rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings. Strict adherence thereto must not get in the way of achieving substantial justice. As long as their purpose is sufficiently met and no violation of due process and fair play takes place, the rules should be liberally construed.[46] Dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the

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[45] *Civil Service Commission v. Almojuela*, G.R. No. 194368, April 2, 2013, 694 SCRA 441, 463.

[46] *Regional Agrarian Reform Adjudication Board, et al. v. CA*, *et al.,* 632 Phil. 191, 197 (2010).

ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[47]

WHEREFORE, premises considered, the instant petition is **GRANTED.** The Decision dated January 18, 2011 and Resolution dated August 9, 2011 of the Court of Appeals in CA-G.R. CR No. 32723 are **REVERSED** and **SET ASIDE.** The Decision dated February 23, 2009 and Order dated July 13, 2009, of the Regional Trial Court in Criminal Case Nos. 08-1876-77, which affirmed the Joint Decision dated September 3, 2008 of the Metropolitan Trial Court in Criminal Case Nos. 337902-03 are hereby **REINSTATED.**

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Villarama, Jr.,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 202215. December 9, 2015]

VICMAR DEVELOPMENT CORPORATION and/or ROBERT KUA, Owner, and ENGR. JUANITO C. PAGCALIWAGAN,[1] **Manager,** *petitioners, vs.* **CAMILO ELARCOSA, MARLON BANDA, DANTE L. BALAMAD, RODRIGO COLANSE,**[2] **CHIQUITO PACALDO, ROBINSON PANAGA, JUNIE ABUGHO, SILVERIO NARISMA, ARMANDO**

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[47] *Peñoso v. Dona*, 549 Phil. 39, 46 (2007), citing *Aguam v. Court of Appeals*, 388 Phil. 587, 594 (2000).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

[1] Also spelled as Pagcalinawan in some parts of the records.

[2] Also spelled as Colansi in some parts of the records.

GONZALES, TEOFILO ELBINA, FRANCISCO BAGUIO, GELVEN RHYAN RAMOS, JULITO SIMAN, RECARIDO[3] PANES, JESUS TINSAY, AGAPITO CANAS, JR., OLIVER LOBAYNON, SIMEON BAGUIO, JOSEPH SALCEDO, DONIL INDINO, WILFREDO GULBEN, JESRILE[4] TANIO, RENANTE PAMON, RICHIE[5] GULBEN, DANIEL ELLO, REXY DOFELIZ, RONALD NOVAL, NORBERTO BELARGA, ALLAN BAGUIO, ROBERTO PAGUICAN, ROMEO[6] PATOY, ROLANDO TACBOBO, WILFREDO LADRA, RUBEN PANES, RUEL CABANDAY, and JUNARD[7] ABUGHO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF IN LABOR CASES WHEN THERE IS A SHOWING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITED A GRAVE ABUSE OF DISCRETION, FOR ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The CA may grant a Petition for *Certiorari* if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding the material evidence decisive of a case. It cannot "make this determination without looking into the evidence presented by the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence,

[3] Also spelled as Ricarido in some parts of the records.

[4] Also spelled as Jesreil in some parts of the records.

[5] Also spelled as Rechie in some parts of the records.

[6] Also spelled as Romel in some parts of the records.

[7] Also spelled as Jonard in some parts of the records.

which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record." In this case, we find that the CA correctly granted respondent's Petition for *Certiorari* because the NLRC gravely abused its discretion when it affirmed the dismissal of respondents' Complaints.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REGULAR EMPLOYEE; DEFINED.— Section 280 of the Labor Code defines a regular employee as one who is 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.

3. ID.; ID.; ID.; THE TEST TO DETERMINE WHETHER AN EMPLOYEE IS REGULAR IS THE REASONABLE CONNECTION BETWEEN THE ACTIVITY HE PERFORMS AND ITS RELATION TO THE EMPLOYER'S BUSINESS OR TRADE.— [R]espondents were shown to have performed activities necessary in the usual business of Vicmar. Most of them were assigned to activities essential for plywood production, the central business of Vicmar. x x x [M]ore than half of the respondents were assigned to the boiler, where pieces of plywood were cooked to perfection. While the other respondents appeared to have been assigned to other sections in the company, the presumption of regular employment should be granted in their favor pursuant to Article 280 of the Labor Code since they have been performing the same activity for at least one year, as they were assigned to the same sections, and there is no indication that their respective activities ceased. The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade, as in the case of respondents assigned to the boiler section. Nonetheless, the continuous re-engagement of all respondents to perform the same kind of tasks proved the necessity and desirability of their services in the business of Vicmar. Likewise, considering that respondents appeared to have been performing their duties

for at least one year is sufficient proof of the necessity, if not the indispensability of their activities in Vicmar's business.

4. ID.; ID.; INDEPENDENT CONTRACTORSHIP; REQUISITES.— To determine the existence of independent contractorship, it is necessary to establish that the contractor carries a distinct and independent business, and undertakes to perform work on its own account and under its responsibility and pursuant to its own manner and method, without the control of the principal, except as to the result; that the contractor has substantial capital or investment; and, that the agreement between the principal and the contractor assures the contractual employees to all labor and occupational safety and health standards, to right to self-organization, security of tenure and other benefits. Other than their respective Certificates of Registration issued by the DOLE on August 12, 2004, E.A Rosales Contracting Services and Candole Labor Contracting Services were not shown to have substantial capital or investment, tools and the like. Neither was it established that they owned equipment and machineries for the purported contracted job. Also, the allegation that they had clients other than Vicmar remained to be bare assertion without corresponding proof. More importantly, there was no evidence presented that these contractors undertook the performance of their service contracts with Vicmar pursuant to their own manner and method, without the control and supervision of Vicmar.

5. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; CORPORATE FICTION; WHEN IT APPEARS THAT BUSINESS ENTERPRISES ARE OWNED, CONDUCTED AND CONTROLLED BY THE SAME PARTIES, LAW AND EQUITY WILL DISREGARD THE LEGAL FICTION THAT THESE CORPORATIONS ARE DISTINCT ENTITIES AND SHALL TREAT THEM AS ONE.— The Court also gives merit to the finding of the CA that Vicmar is the employer of respondents despite the allegations that a number of them were assigned to the branches of Vicmar. Petitioners failed to refute the contention that Vicmar and its branches have the same owner and management – which included one resident manager, one administrative department, one and the same personnel and finance sections. Notably, all respondents were employed by the same plant manager, who signed their identification cards some of whom were under Vicmar, and the others under TFDI. Where it appears that business enterprises are owned, conducted and

controlled by the same parties, law and equity will disregard the legal fiction that these corporations are distinct entities and shall treat them as one. This is in order to protect the rights of third persons, as in this case, to safeguard the rights of respondents.

APPEARANCES OF COUNSEL

Laviña Law Office for petitioners.
Xavier University Center for Legal Assistance for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari* assailing the November 24, 2009 Decision[8] of the Court of Appeals (CA) in CA-G.R. SP No. 01853-MIN. The CA granted the Petition for *Certiorari* filed therewith, and reversed and set aside the February 2, 2007[9] Resolution of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro, which in turn, affirmed the May 25, 2006[10] and May 29, 2006[11] respective Decisions of Executive Labor Arbiters (LA) Benjamin E. Pelaez (Pelaez) and Noel Augusto S. Magbanua (Magbanua) dismissing the complaints for lack of merit. Also assailed is the May 10, 2012 CA Resolution[12] denying the motion for reconsideration.

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[8] CA *rollo*, pp. 328-347; penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Edgardo A. Camello and Elihu A. Ybañez; Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, dissented.

[9] *Id*. at 32-35; penned by Presiding Commissioner Salic B. Dumarpa and concurred in by Commissioners Proculo T. Sarmen and Jovito C. Cagaanan.

[10] *Id*. at 197-208.

[11] *Id*. at 188-195.

[12] *Id*. at 391-395; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Melchor Q. C. Sadang, Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles; Associate Justice Edgardo T. Lloren, dissented.

Factual Antecedents

This case stemmed from a Complaint for illegal dismissal and money claims filed by Ruben Panes, Ruel Cabanday and Jonard Abugho (respondents) against Vicmar Development Corporation (Vicmar) and/or Robert Kua (Kua), its owner and Juanito Pagcaliwagan (Pagcaliwagan), its manager, docketed as NLRC Case No. RAB-10-08-00593-2005;[13] and consolidated Complaints for illegal dismissal and money claims filed by Camilo Elarcosa, Marlon Banda, Dante Balamad, Rodrigo Colanse, Chiquito Pacaldo, Robinson Panaga, Romel Patoy, Wilfredo Ladra, Junie Abugho, Silverio Narisma, Armando Gonzales, Teofilo Elbina, Francisco Baguio, Gelven Rhyan Ramos, Julito Siman, Recarido Panes, Jesus Tinsay, Agapito Cañas, Jr., Oliver Lobaynon, Rolando Tacbobo, Simeon Baguio, Roberto Paguican, Joseph Salcedo, Donil Indino, Wilfredo Gulben, Jesreil Taneo, Renante Pamon, Richie Gulben, Daniel Ello, Rexy Dofeliz, Ronald Noval, Norberto Belarca, and Allan Baguio (respondents), among others, against Vicmar, Kua, and Pagcaliwagan (petitioners), docketed as NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[14]

Respondents alleged that Vicmar, a domestic corporation engaged in manufacturing of plywood for export and for local sale, employed them in various capacities – as boiler tenders, block board receivers, waste feeders, plywood checkers, plywood sander, conveyor operator, ripsaw operator, lumber grader, pallet repair, glue mixer, boiler fireman, steel strap repair, debarker operator, plywood repair and reprocessor, civil workers and plant maintenance. They averred that Vicmar has two branches, Top Forest Developers, Incorporated (TFDI) and Greenwood International Industries, Incorporated (GIII) located in the same compound where Vicmar operated.[15]

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[13] As stated in the ELA Decision dated May 29, 2006; *Id*. at 188.

[14] As stated in ELA Decision dated May 25, 2006; *Id*. at 197-198.

[15] *Id*. at 52.

According to respondents, Vicmar employed some of them as early as 1990 and since their engagement they had been performing the heaviest and dirtiest tasks in the plant operations. They claimed that they were supposedly employed as "extra" workers; however, their assignments were necessary and desirable in the business of Vicmar. They asserted that many of them were assigned at the boilers for at least 11 hours daily.[16] They emphasized that the boiler section was necessary to Vicmar's business because it was where pieces of plywood were dried and cooked to perfection.[17] They further stated that a number of them were also assigned at the plywood repair and processing section, which required longer working hours.[18]

Respondents declared that Vicmar paid them minimum wage and a small amount for overtime but it did not give them benefits as required by law, such as Philhealth, Social Security System, 13th month pay, holiday pay, rest day and night shift differential.[19] They added that Vicmar employed more than 200 regular employees and more than 400 "extra" workers.[20]

Sometime in 2004, Vicmar allegedly informed respondents that they would be handled by contractors.[21] Respondents stated that these contractors were former employees of Vicmar and had no equipment and facilities of their own.[22] Respondents averred that as a result thereof, the wages of a number of them who were receiving ₱276.00 as daily wage, were reduced to ₱200.00 or ₱180.00, despite overtime work; and the wages of those who were receiving ₱200.00 and ₱180.00 were reduced to ₱145.00 or ₱131.00. Respondents protested said wage decrease but to no avail. Thus, they filed a Complaint with the DOLE[23]

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[16] *Id*. at 53.
[17] *Id*. at 132.
[18] *Id*. at 58.
[19] *Id*. at 53.
[20] *Id*. at 59.
[21] *Id*. at 53.
[22] *Id.* at 57.
[23] Department of Labor and Employment.

for violations of labor standards for which appropriate compliance orders were issued against Vicmar.[24]

Respondents claimed that on September 13, 2004, 28 of them were no longer scheduled for work and that the remaining respondents, including their sons and brothers, were subsequently not given any work schedule.[25]

Respondents maintained that they were regular employees of Vicmar; that Vicmar employed a number of them as early as 1990 and as late as 2003[26] through Pagcaliwagan, its plant manager; that Vicmar made them perform tasks necessary and desirable to its usual business; and that Vicmar paid their wages and controlled the means and methods of their work to meet the standard of its products. Respondents averred that Vicmar dismissed them from service without cause or due process that prompted the filing of this illegal dismissal case.[27]

Respondents claimed that they were illegally dismissed after Vicmar learned that they instituted the subject Complaint through the simple expedience of not being scheduled for work. Even those persons associated with them were dismissed. They also asserted that Vicmar did not comply with the twin notice requirement in dismissing employees.[28]

Furthermore, respondents contended that while Vicmar, TFDI and GIII were separately registered with the SEC,[29] they were involved in the same business, located in the same compound, owned by one person, had one resident manager, and one and the same administrative department, personnel and finance sections. They claimed that the employees of these companies were identified as employees of Vicmar even if they were assigned in TFDI or GIII.[30]

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[24] CA *rollo*, pp. 53-54.

[25] *Id*. at 54-55.

[26] *Id*. at 58.

[27] *Id*. at 56.

[28] *Id*. at 59-60.

[29] Securities and Exchange Commission.

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

On the other hand, petitioners stated that Vicmar is a domestic corporation engaged in wood processing, including the manufacture of plywood since 1970;[31]that Vicmar employed adequate regular rank-and-file employees for its normal operation; and that it engaged the services of additional workers when there were unexpected high demands of plywood products and when several regular employees were unexpectedly absent or on leave.[32]

Petitioners pointed out that the engagement of Vicmar's "extra" workers was not continuous and not more than four of them were engaged per section in every shift. They added that from the time of engagement, respondents were not assigned for more than one year in a section or a specific activity.[33] They explained that some of Vicmar's "extra" workers were engaged under "*pakyaw*" system and were paid based on the items repaired or retrieved.[34]Petitioners also stated that respondents Allan Baguio, Romel Patoy, Rexy Dofeliz, Marlon Banda, Gulben Rhyan Ramos, Julieto Simon and Agapito Cañas, Jr. were "extra" workers of TFDI, not Vicmar.[35] They likewise alleged that a number of respondents were engaged to assist regular employees in the company,[36]and the others were hired to repair used steel straps and retrieve useable veneer materials, or to perform janitorial services.[37]

Moreover, petitioners argued that the engagement of additional workforce was subject to the availability of forest products, as well as veneer materials from Malaysia or Indonesia and the availability of workers.[38]

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

[32] *Id*. at 104.

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

[34] *Id*. at 105.

[35] *Id*. at 107.

[36] *Id*. at 108.

[37] *Id*. at 109.

[38] *Id*. at 170.

Petitioners further asseverated that sometime in August 2004, they decided to engage the services of legitimate independent contractors, namely, E.A. Rosales Contracting Services and Candole Contracting Services, to provide additional workforce.[39] Petitioners claimed that they were unaware that respondents were dissatisfied with this decision leading to the DOLE case.[40] They insisted that hiring said contractors was a cost-saving measure, which was part of Vicmar's management prerogative.[41]

Ruling of the Executive Labor Arbiters

On May 25, 2006, ELA Pelaez dismissed the complaints in NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[42] On May 29, 2006, ELA Magbanua dismissed the complaint in NLRC Case No. RAB-10-08-00593-2005.[43]

Both ELAs Pelaez and Magbanua held that respondents were seasonal employees of Vicmar, whose work was "co-terminus or dependent upon the extraordinary demands for plywood products and also on the availability of logs or timber to be processed into plywood."[44] They noted that Vicmar could adopt cost-saving measures as part of its management prerogative, including engagement of legitimate independent contractors.[45]

Ruling of the National Labor Relations Commission

Consequently, respondents filed a Notice of Appeal with Motion to Consolidate Cases[46] alleging that the foregoing cases involved same causes of actions, issues, counsels, and respondents, and complainants therein were similarly situated.

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[39] *Id*. at 105-106.

[40] *Id*. at 106.

[41] *Id*. at 110

[42] *Id*. at 197-208.

[43] *Id*. at 188-195.

[44] *Id*. at 193-205.

[45] *Id*. at 194-195, 206-207.

[46] *Id*. at 209-211.

Thereafter, in their Consolidated Memorandum on Appeal,[47] respondents argued that their work in Vicmar was not seasonal. They averred that since their employment in 1990 until their termination in 2004, they continuously worked for Vicmar and were not allowed to work for other companies. They alleged that there was never a decline in the demand and production of plywood. They also claimed that they continuously worked in Vicmar the whole year, except in December during which the machines were shut down for servicing and clean-up. They, nonetheless, stated that some of them were the ones who had been cleaning these machines.

In addition, respondents averred that even assuming that they were seasonal employees, they were still regular employees whose employment was never severed during off-season. Thus, they asserted that the decision to farm them out to contractors was in violation of their right to security of tenure and was an evidence of bad faith on the part of Vicmar.

On February 2, 2007, the NLRC affirmed the Decisions of ELAs Pelaez and Magbanua.[48] On April 30, 2007, it denied respondents' motion for reconsideration.[49]

Ruling of the Court of Appeals

Undaunted, respondents filed with the CA a Petition[50] for *Certiorari* maintaining that they were regular employees of Vicmar and that the latter illegally dismissed them. They insisted that the labor contractors engaged by Vicmar were "labor-only" contractors, as they have no equipment and facilities of their own.

Petitioners, for their part, reiterated that Vicmar employed respondents as additional workforce when there was high demand for plywood thus, they were merely seasonal employees of

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[47] *Id*. at 213-235.

[48] *Id*. at 32-35.

[49] *Id*. at 42-43.

[50] *Id*. at 2-25.

Vicmar. They argued that Vicmar engaged independent contractors as a cost-saving measure; and these contractors exercised direct control and supervision over respondents. In conclusion, petitioners declared that respondents were not illegally dismissed but lost their employment because of refusal to coordinate with Vicmar's independent contractors.

On November 24, 2009, the CA rendered the assailed Decision granting the Petition for *Certiorari*, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is GRANTED. The Resolution dated February 2, 2007 of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City is REVERSED and SET ASIDE. Private respondents are ORDERED to reinstate petitioners to their former positions, without loss of seniority rights, and to pay full backwages from the time they were illegally dismissed until actual reinstatement.
>
> SO ORDERED.[51]

The CA held that a number of respondents were assigned to the boiler section where plywood was dried and cooked to perfection; and while the other respondents were said to have been assigned at the general service section, they were "cleaners on an industrial level handling industrial refuse."[52] As such, according to the CA, respondents performed activities necessary and desirable in the usual business of Vicmar, as they were assigned to departments vital to its operations. It also noted that the repeated hiring of respondents proved the importance of their work to Vicmar's business. It maintained that the contractors were engaged by Vicmar only for the convenience of Vicmar. In sum, the CA declared that respondents were illegally dismissed since there was no showing of just cause for their termination and of compliance by Vicmar to due process of law.

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[51] *Id.* at 346.

[52] *Id.* at 339.

On May 10, 2012, the CA denied petitioners' motion for reconsideration.[53]

Petitioners thus filed this Petition raising the sole ground as follows:

THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT AND DEFERENCE, ERRED IN REVERSING AND SETTING ASIDE THE FINDINGS OF FACTS AND CONCLUSIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). THE DECISION AS WELL AS THE RESOLUTION ARE NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE AND IF NOT CORRECTED, WILL CAUSE GRAVE INJUSTICE AND IRREPERABLE [SIC] DAMAGE TO THE PETITIONERS WHO WILL BE CONSTRAINED TO ABSORB UNCESSARY [SIC] WORKFORCE, WHICH WILL LEAD TO THE FURTHER DETERIORATION OF ITS FINANCIAL INSTABILITY [SIC] AND POSSIBLY TO ITS CLOSURE.[54]

Petitioners contend that it is irregular for the CA to reverse the findings of facts of the NLRC and the ELAs based on two work schedules of different companies and identification cards of five respondents. They maintain that said evidence cannot conclusively prove that respondents were regular employees of Vicmar.[55]

Additionally, petitioners argue that the CA erred in finding that they (petitioners) have the burden to prove that respondents were hired for only one season to establish that they were mere seasonal employees. Petitioners emphasize that since the inception of this case, they have been denying respondents' claim that they were working under regular working hours and working days.[56]

Petitioners maintain that respondents were Vicmar's "extra" workers;[57] that the engagement of independent contractors was

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[53] *Id*. at 391-395.

[54] *Rollo*, p. 21.

[55] *Id*. at 26.

[56] *Id*. at 26-27.

[57] *Id*. at 28.

a management prerogative exercised in good faith;[58] that some of the respondents were engaged by TFDI and thus, they have no standing in this case.[59]

Respondents, on their part, assert that petitioners have the burden to prove that they (respondents) were seasonal employees because such allegation is a critical fact that must be substantiated.[60] They likewise restate that they were regular employees of Vicmar because they had been performing tasks necessary and desirable for the production of plywood; they continuously worked in Vicmar for more than 11 hours daily until they were terminated in September 2004; and they were not allowed to work for companies other than Vicmar.[61]

Respondents claim that assuming that they were "extra" workers, still, their continued and repeated hiring for more than 10 years made their functions necessary or desirable in the usual business of Vicmar.[62]

Issue

Did the CA err in finding that the NLRC gravely abused its discretion in affirming the ELAs' Decisions dismissing the complaint?

Our Ruling

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence or such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[63] The CA may grant a Petition for *Certiorari* if it

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[58] *Id*. at 33-34.

[59] *Id*. at 34.

[60] *Id*. at 119.

[61] *Id*. at 121-123.

[62] *Id*. at 124.

[63] *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 743 SCRA 270, 277.

finds that the NLRC committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding the material evidence decisive of a case. It cannot "make this determination without looking into the evidence presented by the parties. Necessarily, the appellate court can only evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record."[64]

In this case, we find that the CA correctly granted respondents' Petition for *Certiorari* because the NLRC gravely abused its discretion when it affirmed the dismissal of respondents' Complaints.

Section 280 of the Labor Code defines a regular employee as one who is 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.[65]

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[64] *DOLE Philippines, Inc. v. Esteva,* 538 Phil. 817, 854 (2006).

[65] Art. 280. Regular and casual employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Here, there is substantial evidence to prove that respondents were regular employees such that their separation from work without valid cause amounted to illegal dismissal.

To support their illegal dismissal case, respondents listed the date of their hiring, the date they were terminated and the sections where they were assigned prior to dismissal, to wit:[66]

NAMES	DATE HIRED	SECTION	DATE FIRED
Panes, Ruben	June 1990	Boiler	Oct. 2004
Panes, Recarido	August 1990	Boiler	Sept. 2004
Tinsay, Jesus	1991	Boiler	Sept. 2004
Gonzales, Armando	June 1991	Assy./Fin.	Feb. 2004
Patoy, Romel	Nov. 1991	Boiler	Sept. 2004
Ladra, Wilfredo	1992	Plant Maint.	Sept. 2004
Balamad, Dante	July 1994	Boiler	Sept. 2004
Baguio, Simeon	1995	Boiler	Sept. 2004
Baguio, Francisco	1995	Block Board	June 2004
Tacbobo, Rolando	Jan. 1995	Plant Maint.	Sept. 2004
Belarga, Norberto	1995	Boiler	July 2004
Elarcosa, Camilo	1995	Boiler	Sept. 2004
Abugho, Junie	June 1996	Boiler	Sept. 2004
Pamon, Renante	June 1996	Assy./Fin.	Sept. 2004
Abugho, Jonard	June 1996	Boiler	Oct. 2004
Noval, Ronald	1997	Boiler	Aug. 2004
Siman, Julito	1997	Boiler	Sept. 2004
Baguio, Allan	1997	Boiler	Sept. 2004
Cabanday, Ruel	1998	Assy./Fin.	Oct. 2004
Salcedo, Joseph	1998	Assy./Fin.	Sept. 2004
Lobaynon, Oliver	1998	Boiler	Sept. 2004
Panaga, Robinson	1999	Assy./Fin.	March 2004
Paguican, Roberto	1999	Boiler	Sept. 2004
Ello, Daniel	1999	Boiler	Sept. 2004
Taneo, Jesrile	1999	Plywood Rep.	Sept. 2004
Indino, Donil	1999	Plywood Rep.	Sept. 2004
Narisma, Silverio	July 1999	Assy./Fin.	Sept. 2004
Canas, Agapito Jr.	Jan. 2000	Plant Maint.	Sept. 2004
Gulben, Wilfredo	Dec. 2000	Plywood Rep.	Sept. 2004
Gulben, Rechie	Mar. 2000	Plywood Rep.	Sept. 2004
Pacaldo, Chiquito	Mar. 2000	Green End	May 2002
Dofeliz, Rexy	June 2001	Boiler	Aug. 2004
x x x x			
Ramos, Gelven Rhyan	July 2002	Boiler	Sept. 2004
Colansi, Rodrigo	Oct. 2002	Assy./Fin.	Sept. 2004
x x x x	Jan. 2002	Boiler	Sept. 2004
Banda, Marlon	June 2003	Boiler	Sept. 2004
Elbina, Teofilo	Nov. 2003	Boiler	July 2004

The foregoing allegations were uncontroverted as no relevant employment files, payrolls and records were submitted by

[66] CA *rollo*, pp. 133-134.

petitioners to refute the information. Being the employer, petitioners have custody and control of important employment documents. As such, failure to submit them gives rise to the presumption that their presentation would be prejudicial to petitioners' cause and leads the Court to conclude that the assertions of respondents are truthful declarations.[67]

Interestingly, in the DOLE case filed by respondents against Vicmar and TFDI, the latter did not also submit documents to disprove respondents' claim for wage differentials, 13th month pay and holiday pay. Because of this, the DOLE Secretary denied their appeal. In her February 17, 2006 Order,[68] the DOLE Secretary made the following pronouncements:

> In this case, the appellants *(Vicmar and TFDI)* were given seven x x x days to comply with the Notice of Inspection Results or to contest the findings therein, but they chose to ignore the directive. Summary hearings were conducted x x x to give the appellants ample time to submit payrolls, but they merely promised to do so x x x [A]t the extra hearing on 18 November, they still failed to do so. x x x There being none, the Director could not but sustain the inspection report.
>
> Neither can the Director be faulted for not referring the case to the NLRC on the ground that material evidence, namely, the payrolls and the daily time records, were not duly considered during inspection. The appellants cannot raise this argument because it was they who failed to produce the records for the consideration of the inspector and the Regional Director[.][69]

Similarly, we cannot fault the CA in the instant case for giving credence to the assertions and documentary evidence adduced by respondents. Petitioners had the opportunity to discredit them had they presented material evidence, including payrolls and daily time records, which are within their custody, to prove that respondents were mere additional workforce

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[67] *Poseidon Fishing v. National Labor Relations Commission*, 518 Phil. 146, 161-162 (2006).

[68] CA *rollo,* pp. 45-50; penned by DOLE Secretary Patricia A. Sto. Tomas.

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

engaged when there are extraordinary situations, such as high demands for plywood products or unexpected absences of regular employees; and that respondents were not assigned for more than one year to the same section or activity.

Moreover, respondents were shown to have performed activities necessary in the usual business of Vicmar. Most of them were assigned to activities essential for plywood production, the central business of Vicmar. In the list above, more than half of the respondents were assigned to the boiler, where pieces of plywood were cooked to perfection. While the other respondents appeared to have been assigned to other sections in the company, the presumption of regular employment should be granted in their favor pursuant to Article 280 of the Labor Code since they had been performing the same activity for at least one year, as they were assigned to the same sections, and there is no indication that their respective activities ceased.[70]

The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade, as in the case of respondents assigned to the boiler section. Nonetheless, the continuous re-engagement of all respondents to perform the same kind of tasks proved the necessity and desirability of their services in the business of Vicmar.[71] Likewise, considering that respondents appeared to have been performing their duties for at least one year is sufficient proof of the necessity, if not the indispensability of their activities in Vicmar's business.[72]

The Court also holds that Vicmar failed to prove that the contractors it engaged were legitimate labor contractors.

To determine the existence of independent contractorship, it is necessary to establish that the contractor carries a distinct

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[70] *Omni Hauling Services, Inc. v. Bon, supra* note 64 at 278-281.

[71] *Basan v. Coca-Cola Bottlers Philippines,* G.R. Nos. 174365-66, February 4, 2015.

[72] *Begino v. ABS-CBN Corporation,* G.R No. 199166, April 20, 2015.

and independent business, and undertakes to perform work on its own account and under its responsibility and pursuant to its own manner and method, without the control of the principal, except as to the result; that the contractor has substantial capital or investment; and, that the agreement between the principal and the contractor assures the contractual employees to all labor and occupational safety and health standards, to right to self-organization, security of tenure and other benefits.[73]

Other than their respective Certificates[74] of Registration issued by the DOLE on August 12, 2004, E.A Rosales Contracting Services and Candole Labor Contracting Services were not shown to have substantial capital or investment, tools and the like. Neither was it established that they owned equipment and machineries for the purported contracted job. Also, the allegation that they had clients other than Vicmar remained to be bare assertion without corresponding proof. More importantly, there was no evidence presented that these contractors undertook the performance of their service contracts with Vicmar pursuant to their own manner and method, without the control and supervision of Vicmar.[75]

Petitioners cannot rely on the registration of their contractors to prove that the latter are legitimate independent contractors. Such registration is not conclusive of the status of a legitimate contractor; rather, it merely prevents the presumption of being a labor-only contractor from arising. Indeed, to determine whether labor-only contracting exists, the totality of the facts and circumstances of the case must be considered.[76]

The Court also gives merit to the finding of the CA that Vicmar is the employer of respondents despite the allegations

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[73] *Polyfoam-RGC International Corp. v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 159 citing *Sasan, Sr. v. National Labor Relations Commission, 4th Division*, 590 Phil. 685, 704-705 (2008).

[74] CA *rollo,* pp. 122-123.

[75] *Polyfoam-RGC International Corporation v. Concepcion*, *supra* note 74 at 161-162.

[76] *San Miguel Corporation v. Semillano*, 637 Phil. 115, 129-130 (2010).

that a number of them were assigned to the branches of Vicmar. Petitioners failed to refute the contention that Vicmar and its branches have the same owner and management – which included one resident manager, one administrative department, one and the same personnel and finance sections. Notably, all respondents were employed by the same plant manager, who signed their identification cards some of whom were under Vicmar, and the others under TFDI.

Where it appears that business enterprises are owned, conducted and controlled by the same parties, law and equity will disregard the legal fiction that these corporations are distinct entities and shall treat them as one. This is in order to protect the rights of third persons, as in this case, to safeguard the rights of respondents.[77]

Considering that respondents were regular employees and their termination without valid cause amounts to illegal dismissal, then for its contrary ruling unsupported by substantial evidence, the NLRC gravely abused its discretion in dismissing the complaints for illegal dismissal. Therefore, the CA Decision setting aside that of the NLRC is in order and must be sustained.[78]

WHEREFORE, the Petition is **DENIED**. The Decision dated November 24, 2009 and Resolution dated May 10, 2012 of the Court of Appeals in CA-G.R. SP No. 01853-MIN are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perez,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[77] *Tomas Lao Construction v. National Labor Relations Commission,* 344 Phil. 268, 286-287 (1997).

[78] *Omni Hauling Services, Inc. v. Bon, supra* note 64 at 282.

[*] Per Special Order No. 2301 dated December 1, 2015.

FIRST DIVISION

[G.R. No. 202877. December 9, 2015]

NARRA NICKEL MINING AND DEVELOPMENT CORPORATION, TESORO MINING AND DEVELOPMENT, INC., and MCARTHUR MINING, INC., *petitioners, vs.* **REDMONT CONSOLIDATED MINES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 43 OF THE RULES OF COURT; MUST BE TAKEN AGAINST A JUDGMENT, FINAL ORDER, RESOLUTION OR AWARD OF A QUASI-JUDICIAL AGENCY IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTIONS.— It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same. The reason for the rule is that a court without jurisdiction cannot render a valid judgment. Cast against this light, the Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case. The **jurisdictional parameter** that the appeal be taken against a judgment, final order, resolution or award of a "quasi-judicial agency **in the exercise of its quasi-judicial functions**" is explicitly stated in Section 1 of the said Rule x x x.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER; REFERS TO THE POWER OF THE ADMINISTRATIVE AGENCY TO ADJUDICATE THE RIGHTS OF PERSONS BEFORE IT.— Quasi-judicial or **administrative adjudicatory power** is the power of the administrative agency to **adjudicate the rights of persons before it**. The administrative body exercises its quasi-judicial power when it performs **in a judicial manner** an act which is essentially executive or administrative in nature, where the power to act in such manner

is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. "'*Adjudicate*' as commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, or settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge.'" "In the legal sense, 'adjudicate' means: '[t]o settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;' and 'adjudge' means: '[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x. Implies a judicial determination of a fact, and the entry of a judgment.'" **The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described**. It cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The OP – at the instance of Redmont at that – was exercising an administrative function pursuant to the President's authority to invoke the Republic's right under paragraph a (iii), Section 17.2 of the FTAA x x x. With the legal treatment and parameters of an FTAA in mind, it becomes apparent that the OP's cancellation and/or revocation of the FTAA is **an exercise of a contractual right that is purely administrative in nature**, and thus, cannot be treated as an adjudication x x x. As one of the contracting parties to the FTAA, the OP could not have adjudicated on the matter in which it is an interested party, as in a court case where rights and duties of parties are settled before an impartial tribunal. In a very loose sense, the OP's cancellation/revocation may be taken as a "decision" but only to the extent of considering it as its final administrative action internal to its channels. It is not one for which we should employ the conventional import of the phrase "final and executory," as accorded to proper judicial/quasi-judicial decisions, and its concomitant effect of barring further recourse of a party.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; A FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT IS CLASSIFIED AS A GOVERNMENT OR PUBLIC CONTRACT WHICH IS GENERALLY SUBJECT TO THE SAME LAWS AND REGULATIONS GOVERNING THE VALIDITY AND SUFFICIENCY OF CONTRACTS BETWEEN

PRIVATE INDIVIDUALS.— The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution x x x. An FTAA is explicitly characterized as **a contract** in Section 3 (r) of RA 7942 x x x. Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a **government or public contract**, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals." x x x Similar to private contracts, an FTAA involves terms, conditions, and warranties to be followed by the contracting parties, which are expressly stated in Section 35 of RA 7942. Likewise, Section 36 of RA 7942 provides that an FTAA goes through negotiation x x x. [B]eing a government or public contract, the FTAA is subject to fundamental contract principles, one of which is the principle of mutuality of contracts which would definitely be violated if one were to accept the view that the OP, a contracting party, can adjudicate on the contract's own validity. The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code x x x.

4. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7942 (THE PHILIPPINE MINING ACT OF 1995); CONVERSION OF MINERAL AGREEMENT; PUBLICATION IS NOT REQUIRED AS SUCH WOULD HAVE ALREADY BEEN UNDERTAKEN DURING THE APPLICATION OF THE ORIGINAL MINERAL AGREEMENT.— [T]he only time that third parties, *i.e.*, an entity other than the contractor/applicant, may pose an objection to an FTAA application is during the ten (10)-day window period given by Section 55 of the RIRR. However, this window period is only available in instances of "fresh" FTAA applications (meaning, that the same covers an area previously uncovered by any existing mineral agreements and/or FTAAs). Differently, in instances of conversion, *i.e.*, of an existing MPSA to an FTAA, publication is not required as such would have already been undertaken during the application of the original mineral agreement, pursuant to the exemption expressly contained in Section 55 of the RIRR. Absent any form of protest procedure at least under the prevailing rules, it appears that the process

merely involves the concerned executive agency directly evaluating, *i.e.*, screening and checking, whether the contractor had complied with the pertinent requisites necessary for it to enter into a valid FTAA with the Republic. If the requisites have been met, the agency would then endorse the conversion application to the topmost executive levels, *i.e.*, the DENR Secretary, all culminating in the President's, through his/her duly appointed agents/representatives, *i.e.*, the Executive Secretary, execution of the FTAA for and in behalf of the Republic, with the contractor as counter-party. Following these premises, Redmont's opposition to petitioner's application for FTAA conversion was actually made beyond the prescribed course of procedure.

5. **ID.; ID.; ID.; PANEL OF ARBITRATORS; HAS EXCLUSIVE AND ORIGINAL JURISDICTION TO HEAR AND DECIDE MINING DISPUTES; MINING DISPUTE, DEFINED.—** Section 68 of the RIRR provides that the cancellation/revocation/termination of an FTAA may only be done after due process. In relation, Section 77 of RA 7942 x x x provides that the POA has the exclusive and original jurisdiction to hear and decide mining disputes x x x. In *Gonzales v. Climax Mining Ltd.* (*Gonzales*), it was clarified that "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." Note that "the [POA's] jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience." Thus, the Court, in *Gonzales*, ruled that **the POA is bereft of any jurisdiction over a complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the Constitution** x x x. The Court added that although mining rights may be raised as corollary issues, **the POA still has no jurisdiction to resolve cases which mainly involve a determination of a contract's validity**. Neither too would the mere involvement of an FTAA turn a case into a mining dispute that would fall under the POA's jurisdiction x x x.

APPEARANCES OF COUNSEL

Gatmaitan Yap Patacsil Gutierrez & Protacio for petitioners.
Legaspi Barcelo and Salamera Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 23, 2012 and the Resolution[3] dated July 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120409, which affirmed the Decision[4] dated April 6, 2011 and the Resolution[5] dated July 6, 2011 of the Office of the President (OP) in O.P. Case No. 10-E-229 and, among others, ordered the cancellation and/or revocation of the Financial or Technical Assistance Agreement[6] (FTAA) executed between the Republic of the Philippines (Republic) and herein petitioners Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc., and McArthur Mining, Inc.

The Facts

On November 8, 2006, respondent Redmont Consolidated Mines Corporation (Redmont) filed an Application for an Exploration Permit[7] (EP) over mining areas located in the Municipalities of Rizal, Bataraza, and Narra, Palawan. After an inquiry with the Department of Environment and Natural Resources (DENR), Redmont learned that said areas were already covered by existing Mineral Production Sharing Agreements (MPSA) and an EP, which were initially applied for by petitioners' respective predecessors-in-interest with the Mines and Geosciences Bureau (MGB), Region IV-B, Office of the DENR.[8]

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[1] *Rollo,* pp. 44-87.

[2] *Id*. at 19-30. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

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

[4] *Id*. at 452-469. Penned by Executive Secretary Paquito N. Ochoa, Jr.

[5] CA *rollo*, Vol. I, pp. 90-93. See also *rollo*, p. 45.

[6] *Rollo*, pp. 271-324.

[7] CA *rollo*, Vol. I, pp. 252-253.

[8] *Rollo*, pp. 50, 156, 162, and 168.

In particular, petitioner Narra Nickel Mining and Development Corporation (Narra Nickel) acquired the application of MPSA-IV-I-12, covering an area of 3,277 hectares (ha.) in Barangays Calategas and San Isidro, Narra, Palawan, from Alpha Resources and Development Corporation and Patricia Louise Mining and Development Corporation. On March 30, 2006, or prior to Redmont's EP application, Narra Nickel had converted its MPSA into an FTAA application, denominated as AFTA-IVB-07.[9]

For its part, petitioner Tesoro Mining and Development, Inc. (Tesoro) acquired the application of MPSA-AMA-IVB-154 (formerly EPA-IVB-47), covering an area of 3,402 has. in Barangays Malinao and Princesa Urduja, Narra, Palawan, from Sara Marie Mining, Inc. (SMMI). Similar to Narra Nickel, Tesoro sought the conversion of its MPSA into an FTAA, but its application therefor, denominated as AFTA-IVB-08, was filed subsequent to Redmont's EP application, or sometime in May 2007.[10]

In the same vein, petitioner McArthur Mining, Inc. (McArthur) acquired the application of MPSA-AMA-IVB-153, as well as EPA-IVB-44, covering the areas of 1,782 has. and 3,720 has. in Barangays Sumbiling and Malatagao, Bataraza, Palawan, respectively, from Madridejos Mining Corporation, an SMMI assignee. McArthur also filed an application for FTAA conversion in May 2007, denominated as AFTA-IVB-09.[11]

Upon the recommendation of then DENR Secretary Jose L. Atienza, Jr., through a memorandum[12] dated November 9, 2009, petitioners' FTAA applications were all approved on April 5, 2010. Consequently, on April 12, 2010, the Republic – represented by then Executive Secretary Leandro R. Mendoza, acting by authority of then President Gloria Macapagal-Arroyo –

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[9] *Id*. at 452.

[10] *Id*. at 162 and 453. See also *id*. at 332.

[11] *Id*. at 332 and 452.

[12] CA *rollo*, Vol. I, pp. 327-329.

and petitioners executed an FTAA[13] covering the subject areas, denominated as FTAA No. 05-2010-IVB (MIMAROPA).[14]

Prior to the grant of petitioners' applications for FTAA conversion, and the execution of the above-stated FTAA, Redmont filed on January 2, 2007 three (3) separate petitions[15] for the denial of petitioners' respective MPSA and/or EP applications before the Panel of Arbitrators (POA) of the DENR-MGB, docketed as DENR Case Nos. 2007-01,[16] 2007-02,[17] and 2007-03.[18] Redmont's primary argument was that petitioners were all controlled by their common majority stockholder, MBMI Resources, Inc. (MBMI) – a 100% Canadian-owned corporation[19] – and, thus, disqualified from being grantees of MPSAs and/or EPs. The matter essentially concerning the propriety of denying petitioners' MPSAs and/or EPs in view of their nationality had made it all the way to this Court, and was docketed as G.R. No. 195580.[20] In the Court's April 21, 2014 Decision,[21] petitioners were declared to be foreign corporations under the application of the "Grandfather Rule." Petitioners moved for the reconsideration of the said Decision, which was, however, denied in the Court's Resolution dated January 28, 2015.

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[13] *Rollo*, pp. 271-324.

[14] CA *rollo*, Vol. I, pp. 105-159. See also *rollo*, p. 20.

[15] Filed on January 2, 2007. *Rollo*, pp. 155-172.

[16] In particular, Petition for Denial of MPSA and EP Applications of McArthur (see *id.* at 167-172).

[17] In particular, Petition for Denial of MPSA Application of Tesoro (see *id.* at 161-166).

[18] In particular, Petition for Denial of MPSA Application of Narra Nickel (see *id.* at 155-160).

[19] *Id.* at 453.

[20] Entitled "*Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc., and McArthur Mining, Inc. v. Redmont Consolidated Mines Corporation.*"

[21] See *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation*, G.R. No. 195580, April 21, 2014, 722 SCRA 382.

Meanwhile, Redmont separately sought the cancellation and/or revocation of the executed FTAA through a Petition[22] dated May 7, 2010 (May 7, 2010 Petition) filed before the Office of the President (OP), docketed as O.P. Case No. 10-E-229. Redmont asserted, among others, that the FTAA was highly anomalous and irregular, considering that petitioners and their mother company, MBMI, have a long history of violating and circumventing the Constitution and other laws, due to their questionable activities in the Philippines and abroad.[23]

Petitioners opposed Redmont's petition through a motion to dismiss, contending that: (*a*) there is no rule or law which grants an appeal from a memorandum of a department secretary; (*b*) the appeal was filed beyond the reglementary period; (*c*) the appeal was not perfected because copies of the appeal were not properly served on them; and (*d*) Redmont is not a real party-in-interest.[24]

The OP Ruling

In a Decision[25] dated April 6, 2011, the OP granted Redmont's petition. It declared that the OP has the authority to cancel the FTAA because the grant of exclusive power to the President of the Philippines to enter into agreements, including FTAAs under Republic Act No. (RA) 7942,[26] or the "Philippine Mining Act of 1995," carries with it the authority to cancel the same.[27] Thus, finding, *inter alia*, that petitioners misrepresented that they were Filipino corporations qualified to engage in mining

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[22] *Rollo*, pp. 423-450.

[23] See Supplemental Petition with Motion to Admit; CA *rollo*, Vol. I, pp. 338-373.

[24] *Rollo*, p. 459.

[25] *Id.* at 452-469.

[26] Entitled "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION" (approved on March 3, 1995).

[27] *Rollo*, pp. 461-462.

activities,[28] the OP cancelled and/or revoked the said FTAA, and, in turn, gave due course to Redmont's EP application.[29]

Dissatisfied, petitioners appealed to the CA.[30]

The CA Ruling

In a Decision[31] dated February 23, 2012, the CA affirmed the OP Ruling. It found no procedural error in the OP's action on the FTAA, holding that it was done in accordance with the President's power of control over the executive departments.[32] As to its merits, the CA ruled that the Republic, as represented by the OP, had the right to cancel the FTAA, even without judicial permission, because paragraph a (iii), Section 17.2[33] thereof provides that such agreement may be cancelled by either party on the ground of "any intentional and materially false statement or omission of facts by a [p]arty."[34] Accordingly, it sustained the OP's finding that petitioners committed misrepresentations which warranted the cancellation and/or revocation of the FTAA.[35]

Unperturbed, petitioners filed on March 14, 2012 a motion for reconsideration,[36] which was denied in a Resolution[37] dated July 27, 2012; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly affirmed on appeal the OP's cancellation and/or revocation of the FTAA.

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[28] *Id*. at 466.

[29] *Id*. at 468-469.

[30] See Petition for Review [with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction] dated July 26, 2011; *id*. at 470-518.

[31] *Id*. at 19-30.

[32] *Id*. at 24-25.

[33] *Id*. at 311-312.

[34] *Id*. at 25.

[35] *Id*. at 27.

[36] *Id*. at 571-603.

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

The Court's Ruling

The petition is meritorious.

I. ON JURISDICTION.

It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same.[38] The reason for the rule is that a court without jurisdiction cannot render a valid judgment.[39]

Cast against this light, the Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case. The **jurisdictional parameter** that the appeal be taken against a judgment, final order, resolution or award of a "quasi-judicial agency **in the exercise of its quasi-judicial functions**" is explicitly stated in Section 1 of the said Rule:

> Rule 43
>
> Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals
>
> Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission,

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[38] *Alcala v. Villar*, 461 Phil. 617, 624 (2003).

[39] *Zamora v. CA*, 262 Phil. 298, 309 (1990).

Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphases and underscoring supplied)

Quasi-judicial or **administrative adjudicatory power** is the power of the administrative agency to **adjudicate the rights of persons before it**. The administrative body exercises its quasi-judicial power when it performs **in a judicial manner** an act which is essentially executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[40]

"'*Adjudicate*' as commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, or settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge.'" [41] "In the legal sense, 'adjudicate' means: '[t]o settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;' and 'adjudge' means: '[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x. Implies a judicial determination of a fact, and the entry of a judgment.'"[42]

The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described. It cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The OP – at the instance of Redmont at that – was exercising an administrative function pursuant to the President's authority[43] to invoke the Republic's right under paragraph a (iii), Section 17.2 of the FTAA which reads:

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[40] See *Bedol v. Commission on Elections*, 621 Phil. 498, 511 (2009).

[41] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 283-284, citing *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, 496.

[42] *Id.*

[43] See Section 2, Article XII of the 1987 Constitution.

17.2 Termination

a. Grounds. This Agreement may be terminated, after due process, for any of the following causes:

x x x xxx xxx

iii. any intentional and materially false statement or omission of facts by a Party;[44]

To contextualize the exercise, a brief discussion on the nature and legal parameters of an FTAA is apropos.

The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution:

Section 2. x x x.

xxx xxx xxx

The President may enter into **agreements** with foreign-owned corporations involving either **technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils** according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphases supplied)

An FTAA is explicitly characterized as **a contract** in Section 3 (r) of RA 7942:

Section 3. Definition of Terms. – As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:

xxx xxx xxx

(r) "Financial or technical assistance agreement" means **a contract** involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources. (Emphasis and underscoring supplied)

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[44] *Rollo*, p. 311.

Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a **government or public contract**, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals."[45] In *Sargasso Construction & Development Corporation v. Philippine Ports Authority*:[46]

> A government or public contract has been defined as a contract entered into by state officers acting on behalf of the state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform.
>
> A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of.
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> x x x x x x x x x
>
> **x x x. Contracts to which the government is a party are generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals**. A government contract, however, is perfected only upon approval by a competent authority, where such approval is required.[47] (Emphasis and underscoring supplied)

Similar to private contracts, an FTAA involves terms, conditions, and warranties to be followed by the contracting parties, which are expressly stated in Section 35[48] of RA 7942.

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[45] *Sargasso Construction & Development Corporation v. Philippine Ports Authority*, 637 Phil. 259, 277 (2010).

[46] *Id*.

[47] *Id*. at 274-277.

[48] See Section 35, Terms and Conditions, of RA 7942.

Likewise, Section 36 of RA 7942 provides that an FTAA goes through negotiation:

> Section 36. Negotiations. – A financial or technical assistance agreement shall be negotiated by the Department and executed and approved by the President. The President shall notify Congress of all financial or technical assistance agreements within thirty (30) days from execution and approval thereof.

In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*[49] (*La Bugal-B'laan*), the Court differentiated an FTAA from a license. It pronounced that an FTAA involves **contract or property rights**, which merit protection by the due process clause of the Constitution; as such, it may not be revoked or cancelled in a blink of an eye, in contrast, say for instance, to a timber license, else the contractor be unduly deprived of its investments, which are ultimately intended to contribute to the general welfare of the people:

> 3. Citing *Oposa v. Factoran*[,] *Jr.* [G.R. No. 101083, July 30, 1993, 224 SCRA 792], Justice Morales claims that a service contract is *not a contract or property right which merits protection by the due process clause of the Constitution,* but merely a license or privilege which may be validly revoked, rescinded or withdrawn by executive action whenever dictated by public interest or public welfare.
>
> *Oposa* cites *Tan v. Director of Forestry* and *Ysmael v. Deputy Executive Secretary* [210 Phil. 244 (1983)] as authority. The latter cases dealt specifically with **timber licenses only**. *Oposa* allegedly reiterated that *a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation. Thus this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights.*
>
> Should *Oposa* be deemed applicable to the case at bar, on the argument that natural resources are also involved in this situation? We do not think so. A grantee of a timber license, permit or license

[49] 486 Phil. 754 (2004).

agreement gets to cut the timber already growing on the surface; it need not dig up tons of earth to get at the logs. In a logging concession, the investment of the licensee is not as substantial as the investment of a large-scale mining contractor. If a timber license were revoked, the licensee packs up its gear and moves to a new area applied for, and starts over; what it leaves behind are mainly the trails leading to the logging site.

In contrast, the mining contractor will have sunk a great deal of money (tens of millions of dollars) into the ground, so to speak, for exploration activities, for development of the mine site and infrastructure, and for the actual excavation and extraction of minerals, including the extensive tunneling work to reach the ore body. **The cancellation of the mining contract will utterly deprive the contractor of its investments (i.e., prevent recovery of investments), most of which cannot be pulled out**.

To say that an FTAA is just like a mere timber license or permit and does not involve contract or property rights which merit protection by the due process clause of the Constitution, and may therefore be revoked or cancelled in the blink of an eye, is to adopt a well-nigh confiscatory stance; at the very least, it is downright dismissive of the property rights of businesspersons and corporate entities that have investments in the mining industry, whose investments, operations and expenditures do contribute to the general welfare of the people, the coffers of government, and the strength of the economy. Such a pronouncement will surely discourage investments (local and foreign) which are critically needed to fuel the engine of economic growth and move this country out of the rut of poverty. In sum, *Oposa* is not applicable.[50] (Emphases and underscoring supplied)

In *La Bugal-B'laan*, the financial interest of the contractor party to an FTAA was recognized by the Court as follows; hence, the need for its fair protection:

[T]he foreign contractor is in the game precisely to make money. In order to come anywhere near profitability, the contractor must first extract and sell the mineral ore. In order to do that, it must also develop and construct the mining facilities, set up its machineries and equipment and dig the tunnels to get to the deposit. The

[50] *Id*. at 894-895.

contractor is thus compelled to expend funds in order to make profits. If it decides to cut back on investments and expenditures, it will necessarily sacrifice the pace of development and utilization; it will necessarily sacrifice the amount of profits it can make from the mining operations. In fact, at certain less-than-optimal levels of operation, the stream of revenues generated may not even be enough to cover variable expenses, let alone overhead expenses; this is a dismal situation anyone would want to avoid. In order to make money, one has to spend money. This truism applies to the mining industry as well.[51] (Underscoring supplied)

Meanwhile, in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*[52] (*Celestial*), the Court answered the question on who between the DENR Secretary, as one of the functionaries of the President under the Executive Department, and the POA had the authority to cancel mineral agreements. In *Celestial*, it was pronounced that the DENR Secretary, and not the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements. "The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under [Section 2,] Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987[:]"[53]

> Section 2. Mandate. – (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy.
>
> (2) **It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.** (Emphasis supplied)

"[And] [d]erived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987

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[51] *Id.* at 897-898.

[52] 565 Phil. 466 (2007).

[53] *Id.* at 492.

is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements."[54]

In fact, Sections 8 and 29 of RA 7942 confer to the DENR Secretary specific authority over mineral agreements:

> Section 8. Authority of the Department. – The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain. **The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director**, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.
>
> Section 29. Filing and Approval of Mineral Agreements. – x x x.
>
> The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. **The proposed mineral agreement will be approved by the Secretary** and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary. (Emphases supplied)

In this relation, the Court, in *Celestial*, elaborated that a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a 'dispute' involving a mineral agreement under [Section] 77 (b) of RA 7942,[55] which lists down the cases which fall within the jurisdiction of the POA:

> Section. 77. Panel of Arbitrators. – x x x. 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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[54] *Id*. at 493.

[55] See *id*. at 499-502.

(a) Disputes involving rights to mining areas;
(b) Disputes involving mineral agreements or permits;
(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.

This is because such matter "does not pertain to a violation by a party of the right of another. The applicant [who seeks cancellation] is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement."[56] "[R]A 7942 x x x confers exclusive and primary jurisdiction on the DENR Secretary to approve mineral agreements, which is **purely an administrative function within the scope of his powers and authority**."[57]

With the legal treatment and parameters of an FTAA in mind, it becomes apparent that the OP's cancellation and/or revocation of the FTAA is **an exercise of a contractual right that is purely administrative in nature**, and thus, cannot be treated as an adjudication, again, in the sense above-discussed. As one of the contracting parties to the FTAA, the OP could not have adjudicated on the matter in which it is an interested party, as in a court case where rights and duties of parties are settled before an impartial tribunal. In a very loose sense, the OP's cancellation/revocation may be taken as a "decision" but only to the extent of considering it as its final administrative action internal to its channels. It is not one for which we should employ the conventional import of the phrase "final and executory," as accorded to proper judicial/quasi-judicial decisions, and its concomitant effect of barring further recourse of a party. To reiterate, being a government or public contract, the FTAA is subject to fundamental contract principles, one of which is the

[56] *Id.* at 503.

[57] *Id.* at 508 (emphasis and underscoring supplied).

principle of mutuality of contracts which would definitely be violated if one were to accept the view that the OP, a contracting party, can adjudicate on the contract's own validity. The principle of mutuality of contracts is expressed in Article 1308 of the Civil Code, which provides:

> Article 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

At this juncture, the Court finds it fitting to clarify that Redmont's participation in these proceedings does not, by and of itself, make the OP's cancellation/revocation quasi-judicial. Strangely enough, Redmont's May 7, 2010 Petition was, in fact, taken cognizance by the OP albeit having been filed outside the existing state of procedure on FTAA conversion and cancellation. A brief run-through of these procedures would prove instructive.

A. Conversion.

Under Section 45 of DENR Administrative Order No. 2010-21, otherwise known as the "Revised Implementing Rules and Regulations of RA 7942, or the Philippine Mining Act of 1995" (RIRR), mining contractor may opt to convert totally or partially his existing mineral agreement, *e.g.*, an MPSA to an FTAA, by filing a Letter of Intent with the MGB, copy furnished the Regional Office where the area covered by said mineral agreement is located. Within sixty (60) days from the filing of the Letter of Intent, the contractor must comply with the requirements for the grant of an FTAA laid down in Sections 49 to 69, Chapter VII of the RIRR, as well as pay the conversion fee. The application for conversion shall be evaluated and eventually, approved upon compliance. Note that the term of the FTAA arising from such conversion shall be equivalent to the remaining period of its predecessor-mineral agreement.

Section 55 of the same DENR issuance requires a publication/posting/radio announcement of an FTAA application. Any adverse claim, protest, or opposition to the said FTAA should be filed directly to the Regional Office, Community Environment and Natural Resources Office, or Provincial Environment and Natural

Resources Office concerned, within ten (10) days from the date of publication or from the last date of posting/radio announcement. The said adverse claim, protest, or opposition shall then be resolved by the POA of the DENR, whose ruling may then be appealed to the proper tribunals.[58] To this, it bears pointing out that Section 55 explicitly exempts "previously published valid and existing mining claims or FTAA applications originating from Exploration Permits that have undergone the [publication requirement]" from the aforesaid publication requirement.

From the foregoing, it may be inferred that the only time that third parties, *i.e.*, an entity other than the contractor/applicant, may pose an objection to an FTAA application is during the ten (10)-day window period given by Section 55 of the RIRR. However, this window period is only available in instances of "fresh" FTAA applications (meaning, that the same covers an area previously uncovered by any existing mineral agreements and/or FTAAs). Differently, in instances of conversion, *i.e.*, of an existing MPSA to an FTAA, publication is not required as such would have already been undertaken during the application of the original mineral agreement, pursuant to the exemption expressly contained in Section 55 of the RIRR. Absent any form of protest procedure at least under the prevailing rules, it appears that the process merely involves the concerned executive agency directly evaluating, *i.e.*, screening and checking, whether the contractor had complied with the pertinent requisites necessary for it to enter into a valid FTAA with the Republic. If the requisites have been met, the agency would then endorse the conversion application to the topmost executive levels, *i.e.*, the DENR Secretary, all culminating in the President's, through his/her duly appointed agents/representatives, *i.e*., the Executive Secretary, execution of the FTAA for and in behalf of the Republic, with the contractor as counter-party. Following these premises,

[58] Under Section 78 of RA 7942 and Section 206 of the RIRR, decisions rendered by POA may be appealed to the MAB within fifteen (15) days from receipt of notice of said decision; otherwise, the OA decision will become final and executory. In turn, Section 79 of RA 7942 and Section 211 of the RIRR uniformly provide that a decision of the MAB may be reviewed by filing a petition for review on *certiorari* before the Supreme Court within thirty (30) days from receipt of the MAB decision.

Redmont's opposition to petitioner's application for FTAA conversion was actually made beyond the prescribed course of procedure.

B. Cancellation.

Section 68 of the RIRR provides that the cancellation/ revocation/termination of an FTAA may only be done after due process. In relation, Section 77 of RA 7942, to reiterate, provides that the POA has the exclusive and original jurisdiction to hear and decide mining disputes:

> Section. 77. Panel of Arbitrators. – x x x. 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:
>
> (a) Disputes involving rights to mining areas;
> (b) Disputes involving mineral agreements or permits;
> (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.

In *Gonzales v. Climax Mining Ltd.* (*Gonzales*),[59] it was clarified that "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."[60] Note that "the [POA's] jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."[61] Thus, the Court, in *Gonzales*, ruled that **the POA is bereft of any jurisdiction over a complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and violation of the Constitution**, *viz.*:

> We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the

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[59] 492 Phil. 682 (2005).

[60] *Id.* at 692; emphasis supplied.

[61] *Id.* at 693.

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 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.

x x x x x x x x x

x x x. Whether the case involves void or voidable contracts is still a judicial question. It may, in some instances, involve questions of fact especially with regard to the determination of the circumstances of the execution of the contracts. But the resolution of the validity or voidness of the contracts remains a legal or judicial question as it requires the exercise of judicial function. It requires the ascertainment of what laws are applicable to the dispute, the interpretation and application of those laws, and the rendering of a judgment based thereon. Clearly, the dispute is not a mining conflict. It is essentially judicial. The complaint was not merely for the determination of rights under the mining contracts since the very validity of those contracts is put in issue.[62]

The Court added that although mining rights may be raised as corollary issues, **the POA still has no jurisdiction to resolve cases which mainly involve a determination of a contract's validity**. Neither too would the mere involvement of an FTAA turn a case into a mining dispute that would fall under the POA's jurisdiction:

The *Complaint* is not about a dispute involving rights to mining areas, nor is it a dispute involving claimholders or concessionaires. The main question raised was the validity of the *Addendum Contract*, the FTAA and the subsequent contracts. The question as to the rights of petitioner or respondents to the mining area pursuant to these contracts,

[62] *Id*. at 692 and 695.

as well as the question of whether or not petitioner had ceded his mining claims in favor of respondents by way of execution of the questioned contracts, is merely corollary to the main issue, and may not be resolved without first determining the main issue.

The *Complaint* is also not what is contemplated by [RA] 7942 when it says the dispute should involve FTAAs. The *Complaint* is not exclusively within the jurisdiction of the Panel of Arbitrators just because, or for as long as, the dispute involves an FTAA. The *Complaint* raised the issue of the constitutionality of the FTAA, which is definitely a judicial question. The question of constitutionality is exclusively within the jurisdiction of the courts to resolve as this would clearly involve the exercise of judicial power. The Panel of Arbitrators does not have jurisdiction over such an issue since it does not involve the application of technical knowledge and expertise relating to mining. x x x.[63]

In this case, the OP cancelled/revoked the subject FTAA based on its finding that petitioners misrepresented, *inter alia*, that they were Filipino corporations qualified to engage in mining activities. Again, this is obviously an administrative exercise of a contractual right under paragraph a (iii), Section 17.2 of the FTAA, which finds legal basis in Section 99 of RA 7942 that states: "[a]ll statements made in the exploration permit, mining agreement and financial or technical assistance shall be considered as conditions and essential parts thereof x x x." A material misrepresentation, if so found by ordinary courts of law as enunciated in *Gonzales* upon a case duly instituted therefor, would then constitute a breach of a contractual condition that would entitle the aggrieved party to cancel/revoke the agreement.[64]

The scenario at hand does not involve a complaint for cancellation/revocation commenced before the ordinary courts of law. Hence, Redmont's recourse to the OP – that, on the assumption that it even had the legal standing to oppose an already executed FTAA which it was not a party to – was, by and of itself, done outside the correct course procedure. Observe that RA 7942 and its RIRR do not state that the OP has the power to take cognizance of a quasi-judicial proceeding involving a petition

[63] *Id*. at 695-696.

[64] See *id*. at 694.

for cancellation of an existing FTAA. In fact, there is even no mention of a petition for cancellation or revocation to be taken by a third party before the OP. While it may be said that the OP has administrative control or supervision over its subordinate agencies, such as the POA,[65] again the jurisdiction of that body pertains only to mining disputes, and not those which involve judicial questions cognizable by the ordinary courts of law.

Thus, at least with respect to cases affecting an FTAA's validity, the Court holds that the OP has no quasi-judicial power to adjudicate the propriety of its cancellation/revocation. At the risk of belaboring the point, the FTAA is a contract to which the OP itself represents a party, *i.e.*, the Republic. It merely exercised a contractual right by cancelling/revoking said agreement, a purely administrative action which should not be considered quasi-judicial in nature. Thus, absent the OP's proper exercise of a quasi-judicial function, the CA had no appellate jurisdiction over the case, and its Decision is, perforce, null and void. With tis, it is unnecessary to delve into the other ancillary issues raised in the course of these proceedings.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 23, 2012 and the Resolution dated July 27, 2012 of the Court of Appeals in CA-G.R. SP No. 120409 are hereby declared **NULL** and **VOID** due to lack of jurisdiction. This pronouncement is without prejudice to any other appropriate remedy the parties may take against each other.

SO ORDERED.

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

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[65] Section 77 of RA 7942 states:

Section 77. Panel of Arbitrators. – There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. x x x

FIRST DIVISION

[G.R. No. 202947. December 9, 2015]

ASB REALTY CORPORATION, *petitioner, vs.* **ORTIGAS & COMPANY LIMITED PARTNERSHIP,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; DOCTRINE OF ESTOPPEL; HAS THE PURPOSE OF FORBIDDING A PARTY TO SPEAK AGAINST HIS OWN ACT OR OMISSION, REPRESENTATION, OR COMMITMENT TO THE INJURY OF ANOTHER TO WHOM THE ACT, OMISSION, REPRESENTATION, OR COMMITMENT WAS DIRECTED AND WHO REASONABLY RELIED THEREON.—** Ortigas apparently recognized *without any reservation* the issuance of the new certificate of title in the name of Amethyst and the subsequent transfer by assignment from Amethyst to the petitioner that resulted in the issuance of the new certificate of title under the name of the petitioner. As such, Ortigas was estopped from assailing the petitioner's acquisition and ownership of the property. The application of estoppel was appropriate. The doctrine of estoppel was based on public policy, fair dealing, good faith and justice, and its purpose was to forbid a party to speak against his own act or omission, representation, or commitment to the injury of another to whom the act, omission, representation, or commitment was directed and who reasonably relied thereon. The doctrine sprang from equitable principles and the equities in the case, and was designed to aid the law in the administration of justice where without its aid injustice would result. Estoppel has been applied by the Court wherever and whenever special circumstances of the case so demanded.

2. **CIVIL LAW; LAND REGISTRATION; ACT NO. 496 (THE LAND REGISTRATION ACT); ENCUMBRANCE AND ANNOTATION, DISTINGUISHED.—** Section 39 of Act No. 496 (*The Land Registration Act*) requires that every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all

encumbrances *except those noted on said certificate*. An encumbrance in the context of the provision is "anything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim or lien upon property." It denotes "any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee by conveyance." An annotation, on the other hand, is "a remark, note, case summary, or commentary on some passage of a book, statutory provision, court decision, of the like, intended to illustrate or explain its meaning." The purpose of the annotation is to charge the purchaser or title holder with notice of such burden and claims. Being aware of the annotation, the purchaser must face the possibility that the title or the real property could be subject to the rights of third parties. By acquiring the parcel of land with notice of the covenants contained in the *Deed of Sale* between the vendor (Ortigas) and the vendee (Amethyst), the petitioner bound itself to acknowledge and respect the encumbrance. Even so, the petitioner did not step into the shoes of Amethyst as a party in the *Deed of Sale*. Thus, the annotation of the covenants contained in the *Deed of Sale* did not give rise to a liability on the part of the petitioner as the purchaser/successor-in-interest without its express assumption of the duties or obligations subject of the annotation. As stated, the annotation was only the notice to the purchaser/successor-in-interest of the burden, claim or lien subject of the annotation.

3. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RESCISSION UNDER ARTICLE 1191; REQUIRES THE MUTUAL RESTITUTION OF THE BENEFITS RECEIVED.— The *Civil Code* uses rescission in two different contexts, namely: (1) rescission on account of breach of contract under Article 1191; and (2) rescission by reason of lesion or economic prejudice under Article 1381. x x x Rescission under Article 1191 of the *Civil Code* is proper if one of the parties to the contract commits a substantial breach of its provisions. It abrogates the contract from its inception and requires the mutual restitution of the benefits received; hence, it can be carried out only when the party who demands rescission can return whatever he may be obliged to restore.

4. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.— Under Section 2, Rule 2 of the *Rules of Court*, a cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action

are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other relief. It is only upon the occurrence of the last element that the cause of action arises, giving the plaintiff the right to file an action in court for the recovery of damages or other relief. The second and third elements were absent herein. The petitioner was not privy to the *Deed of Sale* because it was not the party obliged thereon. Not having come under the duty not to violate any covenant in the *Deed of Sale* when it purchased the subject property despite the annotation on the title, its failure to comply with the covenants in the *Deed of Sale* did not constitute a breach of contract that gave rise to Ortigas' right of rescission. It was rather Amethyst that defaulted on the covenants under the *Deed of Sale*; hence, the action to enforce the provisions of the contract or to rescind the contract should be against Amethyst. In other words, rescission could not anymore take place against the petitioner once the subject property legally came into the juridical possession of the petitioner, who was a third party to the *Deed of Sale*.

APPEARANCES OF COUNSEL

Balgos Gumaru & Jalandoni for petitioner.
Platon Martinez Flores San Pedro & Leaño for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks the review and reversal of the amended decision promulgated on January 9, 2012,[1] whereby the Court of Appeals (CA) disposed thusly:

[1] *Rollo,* pp. 35-52; penned by Associate Justice Elihu A. Ybañez, with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Leoncia R. Dimagiba concurring.

WHEREFORE, premises considered, judgment is rendered:

1. Granting the appeal of plaintiff-appellant and herein movant Ortigas and Company Limited Partnership, and reversing the Decision of the court *a quo* dated December 14, 2009;

2. Rescinding the June 24, 1994 Deed of Sale between Ortigas and Company Limited Partnership and Amethyst Pearl Corporation in view of the material breached (sic) thereof by AMETHYST;

3. Ordering ASB Realty Corporation, by way of mutual restitution, the RECONVEYANCE to ORTIGAS of the subject property covered by TCT No. PT-105797 upon payment by ORTIGAS to ASB of the amount of Two Million Twenty Four Thousand Pesos (PhP 2,024,000.00) plus legal interest at the rate of 6% per annum from the time of the finality of this judgment until the same shall have been fully paid; and

4. Ordering the Register of Deeds of Pasig City to cancel TCT No. PT-105797 and issue a new title over the subject property under the name of ORTIGAS & COMPANY LIMITED PARTNERSHIP.

No pronouncement as to cost.

SO ORDERED.[2]

The petitioner also assails the resolution promulgated on July 26, 2012,[3] whereby the CA denied its *Motion for Reconsideration*.

Antecedents

On June 29, 1994, respondent Ortigas & Company Limited Partnership (Ortigas) entered into a *Deed of Sale* with Amethyst Pearl Corporation (Amethyst) involving the parcel of land with an area of 1,012 square meters situated in Barrio Oranbo, Pasig City and registered under Transfer Certificate of Title (TCT) No. 65118 of the Register of Deeds of Rizal[4] for the consideration of ₱2,024,000.00. The *Deed of Sale*[5] contained the following stipulations, among others:

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

[3] *Id*. at 63-65.

[4] *Id*. at 126.

[5] *Id*. at 115-125.

COVENANTS, CONDITIONS AND RESTRICTIONS

This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme, and is subject to the following covenants which form part of the consideration of ORTIGAS' sale to VENDEE and its assigns, namely:

x x x x x x x x x

B. BUILDING WORKS AND ARCHITECTURE:

1. The building to be constructed on the lot shall be of reinforced concrete, cement hollow blocks and other high-quality materials and shall be of the following height of not more than: fourteen (14) storeys plus one penthouse.

x x x x x x x x x

L. SUBMISSION OF PLANS:

The final plans and specifications of the said building shall be submitted to ORTIGAS for approval not later than six (6) months from date hereof. Should ORTIGAS object to the same, it shall notify and specify to the VENDEE in writing the amendments required to conform with its building restrictions and VENDEE shall submit the amended plans within sixty (60) days from receipt of said notice.

M. CONSTRUCTION AND COMPLETION OF BUILDING:

The VENDEE shall finish construction of its building within four (4) years from December 31, 1991.[6]

As a result, the Register of Deeds of Rizal cancelled TCT No. 65118 and issued TCT No. PT-94175 in the name of Amethyst.[7] The conditions contained in the *Deed of Sale* were also annotated on TCT No. PT-94175 as encumbrances.[8]

On December 28, 1996, Amethyst assigned the subject property to its sole stockholder, petitioner ASB Realty Corporation (the petitioner), under a so-called *Deed of*

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[6] *Id*.

[7] *Id*. at 127-129.

[8] *Id*.

Assignment in Liquidation in consideration of 10,000 shares of the petitioner's outstanding capital stock.[9] Thus, the property was transferred to the petitioner free from any liens or encumbrances except those duly annotated on TCT No. PT-94175.[10] The Register of Deeds of Rizal cancelled TCT No. PT-94175 and issued TCT No. PT-105797 in the name of the petitioner with the same encumbrances annotated on TCT No. PT-94175.[11]

On July 7, 2000, Ortigas filed its complaint for specific performance against the petitioner,[12] which was docketed as Civil Case No. 67978 of the Regional Trial Court (RTC) in Pasig City.[13] Ortigas amended the complaint, and alleged,[14] among others, that:

> 5. Defendant has violated the terms of the Deed of Absolute Sale (Annex "A") in the following manner:
>
> a. While the lot may be used only "for office and residential purposes", defendant introduced constructions on the property which are commercial in nature, like restaurants, retail stores and the like (see par. A, Deed of Absolute Sale, Annex "A").
>
> b. The commercial structures constructed by defendant on the property extend up to the boundary lines of the lot in question violating the setbacks established in the contract (see par. B.A., ibid).
>
> c. Defendant likewise failed to submit the final plans and specifications of its proposed building not later than six (6) months

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[9] *Id*. at 130-131.

[10] *Id*. at 130.

[11] *Id*. at 152-154.

[12] Records, pp. 1-6.

[13] *Id*. at 141, the case was initially raffled to Branch 151 but was later transferred to Branch 153 following the designation of Branch 151 as a special criminal court to handle drug offenses; (records, p. 252),the case was again re-raffled to Branch 268 pursuant to A.M. No. 02-11-17.

[14] *Rollo,* pp. 155-160.

from June 29, 1994 and to complete construction of the same within four (4) years from December 31, 1991. (see pars. L and M, ibid).

d. Being situated in a first-class office building area, it was agreed that no advertisements or any kind of commercial signs shall be allowed on the lot or the improvements therein but this was violated by defendant when it put up commercial signs and advertisements all over the area. (see par. F, ibid).

6. Any of the afore-described violations committed by the defendant empower the plaintiff to sue under parangraph "N. Unilateral Cancellation", plaintiff may have the Deed of Absolute Sale (Annex "A") cancelled and the property reverted to it by paying the defendant the amount it has paid less the items indicated therein.[15]

For reliefs, Ortigas prayed for the reconveyance of the subject property, or, alternatively, for the demolition of the structures and improvements thereon, plus the payment of penalties, attorney's fees and costs of suit.[16]

During the pendency of the proceedings in the RTC, the petitioner amended its Articles of Incorporation to change its name to St. Francis Square Realty Corporation.[17]

After trial on the merits, the RTC rendered its decision on December 14, 2009,[18] and dismissed the complaint, pertinently holding as follows:

Ortigas sold the property [to] Amethyst on 29 June 1994. Amethyst was supposed to finish construction on 31 December 1995. Yet, up to the time the property was transferred to ASB on 28 December 1996, Ortigas never initiated any action **against Amethyst** to enforce said provision. Ortigas is therefore guilty of laches or negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Tijam v. Sibonghanoy, L-21450, 15 April

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

[16] *Id*. at 158-159.

[17] Records, p. 281.

[18] CA *Rollo,* pp. 64-71.

1968, 23 SCRA 29).

It is worth mentioning that the restrictions annotated in TCT No. 94175 (in the name of Amethyst Pearl Corporation) and TCT No. PT-105797 (in the name of ASB) repeatedly and consistently refer to the VENDEE. The term VENDEE in the said restrictions obviously refer to Amethyst Pearls Corporation considering the fact that the date referred to in Paragraph N thereof (Construction and Completion of Building), which is four (4) years from December 31, 1991, obviously refer to the plaintiff's VENDEE Amethyst Pearl Corporation. Definitely, it cannot refer to the defendant ASB which is not a vendee of the plaintiff. Therefore, all references to VENDEE in the restrictions evidently refer to Amethyst Pearl Corporation, the VENDEE in the sale from the plaintiff. Such explanation is more consistent with logic than the plaintiff's convoluted assertions that the said restrictions apply to the defendant ASB.

Reconveyance of the property to Ortigas necessarily implies rescission of the sale or transfer from Amethyst to ASB **and** from Ortigas to Amethyst. But Amethyst was not made a party to the case. Reconveyance of the property to the original seller (Ortigas) applies only on the sale to the original vendee (Amethyst) and not to subsequent vendees to whom the property was sold (Ayala Corp. v. Rosa Diana Realty and Dev. Corp. GR No. 134284, Dec. 1, 2000, 346 SCRA 663).

The non-compliance by the plaintiff with the requisites of its own restrictions further proves that it had no intention whatsoever to enforce or implement the same. If at all, this evinces an afterthought of the plaintiff to belatedly and unjustifiably single out the defendant for alleged non compliance of the said restrictions which are not applicable to it anyway.

WHEREFORE, foregoing premises considered, the present complaint is hereby **dismissed** for lack of basis.

SO ORDERED.[19]

Ortigas appealed to the CA, which initially affirmed the RTC under the decision promulgated on September 6, 2011,[20] ruling thusly:

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

[20] *Rollo,* pp. 53-62; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of the Court) with Associate Justice Remedios Salazar-Fernando and Associate Justice Elihu A. Ybañez concurring.

x x x ORTIGAS can no longer enforce the said restrictions as against ASB.

The *"Covenants, Conditions and Restrictions"* of ORTIGAS with respect to the property clearly states the following purpose:

> "This lot has been segregated by ORTIGAS from its subdivisions to form part of a zonified BUILDING AREA pursuant to its controlled real estate development project and subdivision scheme, x x x"

However, it appears from the circumstances obtaining in this case that ORTIGAS failed to pursue the aforequoted purpose. It never filed a complaint against its vendee, AMETHYST, notwithstanding that it required the latter to complete construction of the building within four (4) years from the execution of the *Deed of Sale.* Neither did it make a demand to enforce the subject restriction. Moreover, while it imposed a restriction on the registration and issuance of title in the name of the vendee under *Paragraph "P"* on *"Registration of Sale",* to wit:

"P. REGISTRATION OF SALE:

The VENDEE hereby agrees that, for the time being, this Deed will not be registered and that its title shall not be issued until the satisfactory construction of the contemplated Office Building and VENDEE's compliance with all conditions therein. xxx"

AMETHYST was nonetheless able to procure the title to the property in its name, and subsequently, assigned the same to ASB.

Besides, records show that there are registered owner-corporations of several properties within the Ortigas area, where the subject property is located, that have likewise failed to comply with the restriction on building construction notwithstanding the fact of its annotation on the titles covering their properties. In fact, the tax declarations covering these properties in the respective names of UNIMART INC., CHAILEASE DEVELOPMENT CO. INC., CANOGA PARK DEVELOPMENT CORPORATION, and MAKATI SUPERMARKET CORPORATION reveal that no improvements or buildings have been erected thereon.

Notwithstanding such blatant non-compliance, however, records are bereft of evidence to prove that ORTIGAS took steps to demand observance of the said restriction from these corporations, or that it

opted to institute any case against them in order to enforce its rights as seller. Thus, while ORTIGAS effectively tolerated the non-compliance of these other corporations, it nonetheless proceeded with the filing of the Complaint *a quo* against ASB, seeking the rescission of the original *Deed of Sale* on the ground of non-compliance of the *very same restriction* being violated by other property owners similarly situated.

On the basis of the foregoing acts or omissions of ORTIGAS, and the factual milieu of the present case, it cannot be pretended that it failed to actively pursue the attainment of its objective of having a "controlled real estate development project and subdivision scheme". The Court thus concurs with the ratiocinations of the RTC when it posited that the restrictions imposed by ORTIGAS on ASB have been "rendered obsolete and inexistent" for failure of ORTIGAS to enforce the same *uniformly and indiscriminately* against all non-complying property owners. If the purpose of ORTIGAS for imposing the restrictions was for its "controlled real estate development project and subdivision scheme", then it should have sought compliance from *all property owners* that have violated the restriction on building completion. As things stand, ASB would appear to have been singled out by ORTIGAS, rendering the present action highly suspect and a mere afterthought.

Consequently, while it may be true that ASB was bound by the restrictions annotated on its title, specifically the restriction on building completion, ORTIGAS is now effectively *estopped* from enforcing the same by virtue of its inaction and silence.

xxx xxx xxx

In this case, ORTIGAS *acquiesced* to the conveyance of the property from AMETHYST to ASB with nary a demand, reservation or complaint for the enforcement of the restriction on building construction. It allowed the four-year period within which to construct a building to lapse before it decided that it *wanted*, after all, to enforce the restriction, which cannot be allowed lest the property rights of the registered owner, ASB, be transgressed. Such a silence or inaction, which in effect led ASB to believe that ORTIGAS no longer sought the enforcement of the restrictions on the contract, therefore *bars* ORTIGAS from enforcing the restriction it imposed on the subject property.

xxx xxx xxx

WHEREFORE, premises considered, the instant appeal is **DENIED.** The assailed *Decision* is hereby **AFFIRMED.**

SO ORDERED.[21]

Acting on Ortigas' *Motion for Reconsideration*, however, the CA promulgated its assailed amended decision on January 9, 2012,[22] whereby it reversed the decision promulgated on September 6, 2011. It observed and ruled as follows:

> It is not disputed that AMETHYST failed to finish construction within the period stated in the 1994 Deed of Sale. As correctly pointed out by ORTIGAS, in accordance with Article 1144 of the Civil Code, the prescriptive period within which to enforce remedies under the 1994 Deed of sale is ten (10) years from the time the right of action accrues.
>
> ORTIGAS, therefore, had ten (10) years from 31 December 1995 or until 31 December 2005 within which to file suit to enforce the restriction. ***ORTIGAS filed the present complaint on 07 July 2000 well within the prescriptive period for filing the same.***
>
> ASB contends that it could not have complied with the particular restriction to finish construction of the building as the period to finish the same had already lapsed by the time ASB acquired the property by way of a Deed of Assignment in Liquidation between AMETHYST and ASB on 28 December 1996. ***We hold, however, that the mere assignment or transfer of the subject property from AMETHYST to ASB does not serve to defeat the vested right of ORTIGAS to avail of remedies to enforce the subject restriction within the applicable prescriptive period.***
>
> xxx xxx xxx
>
> As to the argument that the inaction of ORTIGAS with respect to other non-compliant properties in the Ortigas area is tantamount to consenting to such non-compliance, it must be mentioned that it is the sole prerogative and discretion of Ortigas to initiate any action against the violators of the deed restrictions. This Court cannot interfere with the exercise of such prerogative/discretion. Furthermore, We cannot sustain estoppel in doubtful inference. Absent the

[21] *Id*. at 59-62.

[22] *Supra* note 1.

conclusive proof that its essential elements are present, estoppel must fail. Estoppel, when misapplied, becomes an effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth.[23]

By its resolution promulgated on July 26, 2012, the CA denied the petitioner's *Motion for Reconsideration*[24] for being filed out of time.[25]

Issues

Hence, this appeal in which ASB submits: (1) that its *Motion for Reconsideration* vis-a-vis the CA's amended decision was filed on time; and (2) that the amended decision promulgated on January 9, 2012 by CA be reversed and set aside, and the decision promulgated on September 6, 2011 be reinstated.[26]

The petitioner essentially seeks the resolution of the issue of whether or not Ortigas validly rescinded the *Deed of Sale* due to the failure of Amethyst and its assignee, the petitioner, to fulfil the covenants under the *Deed of Sale*.

Ruling of the Court

The petition for review is meritorious.

1.

Petitioner's motion for reconsideration vis-a-vis the amended decision of the CA was timely filed

In denying the petitioner's *Motion for Reconsideration*, the CA concluded as follows:

> Per allegation of material dates, the Motion for Reconsideration filed by Balgos Gumara & Jalandoni, co-counsel with Jose, Mendoza & Associates, on January 30, 2012 appears to have been filed on time. However, per registry return attached at the back of p. 212 of

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[23] *Id*. at 42-47.

[24] *Id*. at 185-201.

[25] *Id*. at 64.

[26] *Id*. at 11.

the *Rollo,* the Motion for Reconsideration was filed three (3) days late considering that the Amended Decision was received by defendant appellee's counsel of record, Jose, Mendoza & Associates, on January 12, 2012.[27]

The conclusion of the CA was unwarranted because the petitioner established that its filing of the *Motion for Reconsideration* was timely.

It is basic that the party who asserts a fact or the affirmative of an issue has the burden of proving it.[28] Here, that party was the petitioner. To comply with its burden, it attached to its petition for review on *certiorari*: (1) the affidavit executed by Noel S.R. Rose, Senior Partner of Jose, Mendoza & Associates attesting that he had requested the postmaster of the Mandaluyong City Post Office to certify the date when Jose, Mendoza & Associates had received the copy of the amended decision of the CA;[29] and (2) the certification issued on August 15, 2012 by Postmaster Rufino C. Robles, and Letter Carrier, Jojo Salvador, both of the Mandaluyong Central Post Office, certifying that Registered Letter No. MVC 457 containing the copy of the amended decision had been delivered to and received on January 18, 2012 by Jose, Mendoza & Associates, through Ric Ancheta.[30] It thereby sought to prove that it had received the copy of the amended decision only on January 18, 2012, not January 12, 2012 as stated in the registry return card on record. Thus, it had until February 2, 2012, or 15 days from January 18, 2012, within which to file the same. In contrast, Ortigas relied only on the copy of the registry return to refute the petitioner's assertion.[31] Under the circumstances, the filing on January 30, 2012 of the *Motion for Reconsideration* was timely.

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[27] *Id*. at 64.

[28] *Eureka Personnel & Management Services, Inc. v. Valencia,* G.R. No. 159358, July 15, 2009, 593 SCRA 36, 43.

[29] *Rollo,* pp. 66-67.

[30] *Id*. at 70.

[31] *Id*. at 87 and 183.

2.

Ortigas' action for rescission could not prosper

The petitioner reiterates that although the restrictions and covenants imposed by Ortigas under the *Deed of Sale* with Amethyst, particularly with regard to the construction of the building, were similarly imposed on Ortigas' other buyers and annotated on the latter's respective certificates of title,[32] Ortigas never took to task such other buyers and Amethyst for failing to construct the buildings within the periods contractually imposed.[33] It maintains, therefore, that Ortigas slept on its rights because it did not take any action against Amethyst during the period prescribed in the *Deed of Sale*.[34] It argues that even assuming that it was bound by the terms of the *Deed of Sale*, certain circumstances occurred in the interim that rendered it impossible for the petitioner to comply with the covenants embodied in the *Deed of Sale*, namely: (1) the delay in the petitioner's possession of the property resulted from the complaint for forcible entry it had filed in the Metropolitan Trial Court in Pasig City; (2) at the time the property was transferred to the petitioner, the period within which to construct the building had already expired without Ortigas enforcing the obligation against Amethyst; and (3) the petitioner was placed under corporate rehabilitation by the Securities and Exchange Commission (SEC) by virtue of which a stay order was issued on May 4, 2000.[35]

In contrast, Ortigas contends that it had the sole discretion whether or not to commence any action against a party who violated a restriction in the *Deed of Sale*;[36] and that it could not be estopped because the *Deed of Sale* with Amethyst and the deeds of sale with its other buyers contained a uniform provision to the effect that "any inaction, delay or tolerance by

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[32] *Id*. at 15-16.

[33] *Id*. at 16.

[34] *Id*. at 24.

[35] *Id*. at 26-27.

[36] *Id*. at 91-93.

OCLP (Ortigas) in respect to violation of any of the covenants and restrictions committed by these buyers shall not bar or estop the institution of an action to enforce them."[37]

In asserting its right to rescind, Ortigas insists that the petitioner was bound by the covenants of the *Deed of Sale* annotated on TCT No. PT-10597 in the name of the petitioner;[38] and that the petitioner's privity to the *Deed of Sale* was by virtue of its being the successor-in-interest or assignee of Amethyst.[39]

After evaluating the parties' arguments and the records of the case, the Court holds that Ortigas could not validly demand the reconveyance of the property, or the demolition of the structures thereon through rescission.

The *Deed of Assignment in Liquidation* executed between Amethyst and the petitioner expressly stated, in part, that:

> x x x **[T]he ASSIGNOR hereby assigns, transfers and conveys unto the ASSIGNEE**, its successors and assigns, free from any lien or encumbrance except those that are duly annotated on the Transfer Certificate of Title (TCT), **one parcel of real property (with improvements)**, x x x.
>
> x x x x x x x x x
>
> The ASSIGNEE in turn in consideration of the foregoing **assignment of assets** to it, hereby surrenders to ASSIGNOR, Amethyst Pearl Corporation, Stock Certificate Nos. (006, 007, 008, 009, 010, 011), covering a total of TEN THOUSAND SHARES (₱10,000) registered in the name of the ASSIGNEE and its nominees in the books of ASSIGNOR, receipt of which is hereby acknowledged, and in addition hereby releases ASSIGNOR from any and all claims.[40]

The express terms of the *Deed of Assignment in Liquidation*, *supra*, indicate that Amethyst transferred to the petitioner only the tangible asset consisting of the parcel of land covered by

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[37] *Id*. at 99.

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

[39] *Id*. at 106-108.

[40] *Id*. at 130.

TCT No. PT-94175 registered in the name of Amethyst. By no means did Amethyst assign the rights or duties it had assumed under the *Deed of Sale*. The petitioner thus became vested with the ownership of the parcel of land "free from any lien or encumbrance except those that are duly annotated on the [title]" from the time Amethyst executed the *Deed of Assignment in Liquidation*.

Although the *Deed of Sale* stipulated that:

> 3. The lot, together with any improvements thereon, or any rights thereto, shall not be transferred, sold or encumbered before the final completion of the building as herein provided unless it is with the prior express written approval of ORTIGAS.[41]
>
> x x x xxx xxx
>
> The VENDEE hereby agrees that, for the time being, this Deed will not be registered and that its title shall not be issued until the satisfactory construction of the contemplated Office Building and VENDEE's compliance with all conditions herein. x x x[42]

Ortigas apparently recognized *without any reservation* the issuance of the new certificate of title in the name of Amethyst and the subsequent transfer by assignment from Amethyst to the petitioner that resulted in the issuance of the new certificate of title under the name of the petitioner. As such, Ortigas was estopped from assailing the petitioner's acquisition and ownership of the property.

The application of estoppel was appropriate. The doctrine of estoppel was based on public policy, fair dealing, good faith and justice, and its purpose was to forbid a party to speak against his own act or omission, representation, or commitment to the injury of another to whom the act, omission, representation, or commitment was directed and who reasonably relied thereon. The doctrine sprang from equitable principles and the equities in the case, and was designed to aid the law in the administration of justice where without its aid injustice would result. Estoppel

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[41] *Id.* at 117.

[42] *Id.* at 123.

has been applied by the Court wherever and whenever special circumstances of the case so demanded.[43]

Yet, the query that persists is whether or not the covenants annotated on TCT No. PT-10597 bound the petitioner to the performance of the obligations assumed by Amethyst under the *Deed of Sale*.

We agree with Ortigas that the annotations on TCT No. PT-10597 bound the petitioner but not to the extent that rendered the petitioner liable for the non-performance of the covenants stipulated in the *Deed of Sale*.

Section 39 of Act No. 496 (*The Land Registration Act*) requires that every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances *except those noted on said certificate*. An encumbrance in the context of the provision is "anything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim or lien upon property."[44] It denotes "any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee by conveyance."[45] An annotation, on the other hand, is "a remark, note, case summary, or commentary on some passage of a book, statutory provision, court decision, of the like, intended to illustrate or explain its meaning."[46] The purpose of the annotation is to charge the purchaser or title holder with notice of such burden and claims.[47] Being aware of the annotation, the purchaser must face the

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[43] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo,* G.R. No. 170352, June 1, 2011, 650 SCRA 100, 110.

[44] Moreno, *Philippine Law Dictionary*, Third Edition (1988), p. 316.

[45] *Black's Law Dictionary*, Sixth Edition (1990), p. 527.

[46] *Id*. at 89.

[47] *Domingo v. Roces,* G.R. No. 147468, April 9, 2003, 401 SCRA 197, 202.

possibility that the title or the real property could be subject to the rights of third parties.[48]

By acquiring the parcel of land with notice of the covenants contained in the *Deed of Sale* between the vendor (Ortigas) and the vendee (Amethyst), the petitioner bound itself to acknowledge and respect the encumbrance. Even so, the petitioner did not step into the shoes of Amethyst as a party in the *Deed of Sale*. Thus, the annotation of the covenants contained in the *Deed of Sale* did not give rise to a liability on the part of the petitioner as the purchaser/successor-in-interest without its express assumption of the duties or obligations subject of the annotation. As stated, the annotation was only the notice to the purchaser/successor-in-interest of the burden, claim or lien subject of the annotation. In that respect, the Court has observed in *Garcia v. Villar*:[49]

> The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance.
>
> x x x x x x x x x
>
> x x x However, Villar, in buying the subject property with notice that it was mortgaged, only undertook to pay such mortgage or allow the subject property to be sold upon failure of the mortgage creditor to obtain payment from the principal debtor once the debt matures. Villar did not obligate herself to replace the debtor in the principal obligation, and could not do so in law without the creditors consent. Article 1293 of the Civil Code provides:
>
> > **Art. 1293.** Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.

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[48] *Tan v. Benolirao,* G.R. No. 153820, October 16, 2009, 604 SCRA 36, 51.

[49] G.R. No. 158891, June 27, 2012, 675 SCRA 80, 92-93.

Therefore, the obligation to pay the mortgage indebtedness remains with the original debtors Galas and Pingol. x x x

To be clear, contractual obligations, unlike contractual rights or benefits, are generally not assignable. But there are recognized means by which obligations may be transferred, such as by sub-contract and novation. In this case, the substitution of the petitioner in the place of Amethyst did not result in the novation of the *Deed of Sale*. To start with, it does not appear from the records that the consent of Ortigas to the substitution had been obtained despite its essentiality to the novation. Secondly, the petitioner did not expressly assume Amethyst's obligations under the *Deed of Sale*, whether through the *Deed of Assignment in Liquidation* or another document. And, thirdly, the consent of the new obligor (*i.e*., the petitioner), which was as essential to the novation as that of the obligee (*i.e*., Ortigas), was not obtained.[50]

Even if we would regard the petitioner as the assignee of Amethyst as far as the *Deed of Sale* was concerned, instead of being the buyer only of the subject property, there would still be no express or implied indication that the petitioner had assumed Amethyst's obligations. In short, the burden to perform the covenants under the *Deed of Sale*, or the liability for the non-performance thereof, remained with Amethyst. As held in an American case:

The mere assignment of a bilateral executory contract may not be interpreted as a promise by the assignee to the assignor to assume the performance of the assignor's duties, so as to have the effect of creating a new liability on the part of the assignee to the other party to the contract assigned. The assignee of the vendee is under no personal engagement to the vendor where there is no privity between them. *(Champion v. Brown, 6 Johns. Ch. 398; Anderson v. N.Y. & H.R. R. Co., 132 App. Div. 183, 187, 188; Hugel v. Habel, 132 App. Div. 327, 328.)*The assignee may, however, expressly or impliedly, bind himself to perform the assignor's duties. This he may do by contract with the assignor or with the other party to the contract. It has been held (*Epstein v. Gluckin, 233 N. Y. 490*) that where the

[50] *Martinez v. Cavives,* 25 Phil. 581, 585 (1913).

assignee of the vendee invokes the aid of a court of equity in an action for specific performance, he impliedly binds himself to perform on his part and subjects himself to the conditions of the judgment appropriate thereto. "He who seeks equity must do equity." The converse of the proposition, that the assignee of the vendee would be bound when the vendor began the action, did not follow from the decision in that case. On the contrary, the question was wholly one of remedy rather than right and it was held that mutuality of remedy is important only so far as its presence is essential to the attainment of the ends of justice. This holding was necessary to sustain the decision. No change was made in the law of contracts nor in the rule for the interpretation of an assignment of a contract.

A judgment requiring the assignee of the vendee to perform at the suit of the vendor would operate as the imposition of a new liability on the assignee which would be an act of oppression and injustice, unless the assignee had, expressly or by implication, entered into a personal and binding contract with the assignor or with the vendor to assume the obligations of the assignor.[51]

Is rescission the proper remedy for Ortigas to recover the subject property from the petitioner?

The *Civil Code* uses rescission in two different contexts, namely: (1) rescission on account of breach of contract under Article 1191; and (2) rescission by reason of lesion or economic prejudice under Article 1381. Cogently explaining the differences between the contexts of rescission in his concurring opinion in *Universal Food Corp. v. Court of Appeals*,[52] the eminent Justice J.B.L. Reyes observed:

x x x The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything; other than the culpable breach of his obligations by the defendant. This rescission

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[51] *Langel v. Betz,* 250 N.Y. 159.

[52] L-29155, May 13, 1970, 33 SCRA 1, 22-23 (concurring opinion of Justice J.B.L. Reyes).

is in principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his, as expressed in the old Latin aphorism: *"Non servanti fidem, non est fides servanda."* Hence, the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of *lesion* or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d'etre* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for *lesion* enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

Based on the foregoing, Ortigas' complaint was predicated on Article 1191 of the *Civil Code*, which provides:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

Rescission under Article 1191 of the *Civil Code* is proper if one of the parties to the contract commits a substantial breach of its provisions. It abrogates the contract from its inception and requires the mutual restitution of the benefits received;[53] hence, it can be carried out only when the party who demands rescission can return whatever he may be obliged to restore.

[53] *Supercars Management & Development Corporation v. Flores,* G.R. No. 148173, December 10, 2004, 446 SCRA 34, 43.

Considering the foregoing, Ortigas did not have a cause of action against the petitioner for the rescission of the *Deed of Sale*. Under Section 2, Rule 2 of the *Rules of Court*, a cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the defendant not to violate such right; and (3) an act or omission on the part of the defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other relief. It is only upon the occurrence of the last element that the cause of action arises, giving the plaintiff the right to file an action in court for the recovery of damages or other relief.[54]

The second and third elements were absent herein. The petitioner was not privy to the *Deed of Sale* because it was not the party obliged thereon. Not having come under the duty not to violate any covenant in the *Deed of Sale* when it purchased the subject property despite the annotation on the title, its failure to comply with the covenants in the *Deed of Sale* did not constitute a breach of contract that gave rise to Ortigas' right of rescission. It was rather Amethyst that defaulted on the covenants under the *Deed of Sale*; hence, the action to enforce the provisions of the contract or to rescind the contract should be against Amethyst. In other words, rescission could not anymore take place against the petitioner once the subject property legally came into the juridical possession of the petitioner, who was a third party to the *Deed of Sale*.[55]

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[54] *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa & Partners Co., Ltd.,* G.R. No. 159648, July 27, 2007, 528 SCRA 321, 327.

[55] Article 1385 of the *Civil Code* relevantly provides:

Article 1385. – x x x

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. x x x

In view of the outcome, we consider to be superfluous any discussion of the other matters raised in the petition, like the effects of the petitioner's corporate rehabilitation and whether Ortigas was guilty of laches.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **REVERSES** the amended decision promulgated on January 9, 2012 and the resolution promulgated on July 26, 2012 by the Court of Appeals in C.A.-G.R. CV No. 94997; **DISMISSES** Civil Case No. 67978 for lack of cause of action; and **ORDERS** respondent **ORTIGAS & COMPANY LIMITED PARTNERSHIP** to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 203397. December 9, 2015]

AUGUSTO ONG TRINIDAD II, AUGUSTO ONG TRINIDAD III for himself and representing LEVY ONG TRINIDAD and ROHMEL ONG TRINIDAD, MARY ANN NEPOMUCENO TRINIDAD for herself and assisting her minor children JOAQUIN GERARD N. TRINIDAD IV, JACOB GABRIEL N. TRINIDAD, and JERED GYAN N. TRINIDAD, *petitioners, vs.* **SPOUSES BONIFACIO PALAD and FELICIDAD KAUSAPIN,** *respondents.*

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[*] In lieu of Associate Justice Estela M. Perlas-Bernabe, who inhibited due to prior participation in the Court of Appeals, per the raffle of November 4, 2015.

SYLLABUS

CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; CERTIFICATE OF TITLE; CONSTITUTES EVIDENCE OF OWNERSHIP OVER THE SUBJECT PROPERTY AND SERVES AS EVIDENCE OF INDEFEASIBLE AND INCONTROVERTIBLE TITLE TO THE PROPERTY IN FAVOR OF THE PARTIES WHOSE NAMES APPEAR THEREIN; CASE AT BAR.— The fact is undisputed that the subject two-hectare property lies within Lot 13-C which is registered in the name of respondents as TCT T-47318. The evidence on record also suggests that contrary to petitioners' claim, the subject property constitutes a portion of an eight-hectare parcel of land acquired by respondents from Ramos by purchase in 1985, and was not the result of a June 5, 1985 deed of extrajudicial settlement and September 9, 1985 segregation agreement between the original owners and respondent Felicidad. This is a finding of fact arrived at by both the RTC and the CA – and this is admitted by petitioners in their Petition, which specifically adopted the findings of fact of the RTC on this score. By adopting the findings of fact of the trial court, petitioners are precluded from further arguing that TCT T-47318 is void on the ground that it was obtained through a simulated extrajudicial settlement agreement; and as far as this Court is concerned, the fact is settled that respondents acquired the property covered by TCT T-47318 by purchase from Ramos. x x x The CA is therefore correct in its pronouncement – citing *Spouses Esmaquel and Sordevilla v. Coprada* – that TCT T-47318 constitutes evidence of respondents' ownership over the subject property, which lies within the area covered by said title; that TCT T-47318 serves as evidence of indefeasible and incontrovertible title to the property in favor of respondents, whose names appear therein; and that as registered owners, they are entitled to possession of the subject property. As against possession claimed by the petitioners, respondents' certificate of title prevails. "[M]ere possession cannot defeat the title of a holder of a registered [T]orrens title x x x." x x x Thus, as the CA correctly held, petitioners are mere intruders with respect to the subject property; they have no right to own or possess the same. On the other hand, as registered owners of the subject property, respondents have the right to exercise all attributes of ownership including possession which they cannot do while petitioners remain there.

APPEARANCES OF COUNSEL

Calixto Ferdinand B. Dauz III for petitioners.
Dato Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the March 27, 2012 Decision[2] and August 24, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 92118 which granted respondents' appeal and reversed the July 4, 2008 Decision[4] of the Regional Trial Court (RTC) of Lucena City, Branch 53 (RTC) in Civil Case No. 92-71.

Factual Antecedents

On July 23, 1985, respondents – spouses Bonifacio Palad and Felicidad Kausapin (Felicidad) – bought from Renato Ramos (Ramos) an eight-hectare parcel of land located within Lucena City, which was later registered as Transfer Certificate of Title No. (TCT) T-47318.[5]

Respondents later caused the subject property to be surveyed, and it was discovered that a two-hectare portion thereof (the subject property) was occupied by Augusto Trinidad (Augusto), who converted the same into a fishpond.

On May 29, 1992, respondents filed with the RTC of Lucena City a Complaint[6] for recovery of possession with damages

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[1] *Rollo*, pp. 3-19.

[2] *Id*. at 20-27; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Sesinado E. Villon.

[3] *Id*. at 28.

[4] *Id*. at 29-34; penned by Judge Guillermo R. Andaya.

[5] *Id*. at 37.

[6] Records, pp. 1-6.

against Augusto, which was docketed as Civil Case No. 92-71 and assigned to RTC Branch 53.

In his Answer,[7] Augusto claimed that respondents were not the owners of the subject property; that Felicidad secured her title through dubious means; that the subject property formed part of a five-hectare piece of property that was given to him by his father, Atty. Joaquin Trinidad (Atty. Trinidad); that this five-hectare property was acquired by his father from Genaro Kausapin (Genaro), who was his father's client; that said five-hectare property was declared for taxation purposes by his father; that since 1980, he (Augusto) has been in possession of the five-hectare property; that he filed criminal cases for falsification against Felicidad; and that Felicidad was motivated by greed and bad faith in filing the case. Augusto thus prayed that the complaint be dismissed; that Felicidad's TCT T-47318 be nullified; and that damages and attorney's fees be awarded to him.

During the proceedings, Augusto passed away and was substituted by his widow – herein petitioner Levy Ong Trinidad – and children – petitioners Augusto Ong Trinidad II, Augusto Ong Trinidad III, Rohmel Ong Trinidad, and Joaquin Ong Trinidad III.

Ruling of the Regional Trial Court

After trial, or on July 4, 2008, the RTC rendered its Decision,[8] pronouncing as follows:

> This is a complaint for recovery of possession with damages filed by the spouses Bonifacio Palad and Felicidad Kausapin against Augusto Trinidad as the original defendant. In the course of the trial Augusto C. Trinidad died and his widow, Levy Ong Trinidad, and their children Rohmel Ong Trinidad, Augusto Ong Trinidad II, Augusto Ong Trinidad III and Joaquin Trinidad III were substituted as defendants.
>
> xxx xxx xxx

[7] *Id.* at 23-31.

[8] *Rollo*, pp. 29-34.

The land subject of this case is a 2-hectare portion of the eight (8) hectares covered by Transfer Certificate of Title No. T-47318 now registered in the names of the spouses Bonifacio Palad and Felicidad Kausapin (Exhibit "A").

In their complaint, the plaintiffs merely emphasized the fact that as the registered owners of the parcel of land with an area of eight (8) hectares including the 2-hectare area in dispute, they are entitled to the possession of the disputed area which, despite their demands to the defendants to vacate, the defendants have not vacated the area consisting of a well-developed fishpond.

x x x x x x x x x

For their part, the defendants posit as follows: During the lifetime of Genaro Kausapin, the father of complainant Felicidad Kausapin, Genaro Kausapin availed of the legal services of Atty. Joaquin Trinidad in a land dispute involving a 12-hectare property. For Atty. Trinidad's services, Genaro Kausapin and Atty. Trinidad executed on October 4, 1977 a document denominated Kasulatan ng Pagbabahagi whereby they partitioned between themselves the 12-hectare property composed of Lot 13-A, Lot 13-B and Lot 13-C of the Subdivision Plan, (LRC) PSD-254630 confirmed on December 19, 1976 by the Land Registration Commission. As his share in the partition Atty. Trinidad was given Lot 13-A (Exhibit "2").

In 1980 Atty. Trinidad gave to his son Augusto Trinidad the five (5) hectares given to him by Genaro Kausapin as attorney's fee. Augusto Trinidad developed a 2-hectare portion of the five hectares into a fishpond spending huge amount of money in the process.

x x x x x x x x x

By whichever mode the plaintiffs had come to title the 8-hectare property including the 2-hectare portion in dispute, the Court, sifting through the evidence presented by the parties, finds:

1. By virtue of the Kasulatan ng Pagbabahagi dated October 4, 1977 Genaro Kausapin and Atty. Joaquin Trinidad partitioned between themselves the 12-hectare property composed of Lot 13-A, Lot 13-B and Lot 13-C of the Subdivision Plan (LRC) PSD-254630, Atty. Joaquin Trinidad getting Lot 13-A as his attorney's fee for legal services he rendered to Genaro Kausapin.

2. Atty. Joaquin Trinidad gave to his son Augusto Trinidad his 5-hectare share and Augusto Trinidad, beginning the year 1980, developed a portion of the area into a fishpond spending a huge amount of money in the process.

3. On July 23, 1985 the plaintiffs bought an 8-hectare property from Renato Ramos and they had the land titled in their names on September 11, 1985.

4. It was when the plaintiffs had the land they bought from Renato Ramos surveyed that they found out that the fishpond developed by Augusto Trinidad was embraced in the area of the [land] Renato Ramos sold to them.

5. Renato Ramos did not know that the area developed by Augusto Trinidad into a fishpond was part of the land he (Ramos) sold to the plaintiffs. Otherwise, if Renato Ramos knew this, he would not have allowed Augusto Trinidad to occupy and transform the area into a fishpond and, much more, for him (Renato Ramos) to have sold the entire property to the plaintiffs for the measly sum of ₱8,000.00, given the size of the area and the improvements on the area in dispute. Likewise, it was only after the plaintiffs had caused the survey of the area they bought that they came to know that the 2-hectare [property] developed by Augusto Trinidad into a fishpond was within the area they bought.

From the foregoing, it is clear that when Augusto Trinidad entered the property in dispute in 1980 and began to transform it into a fishpond, this was with the knowledge and consent of Genaro Kausapin, the father of the plaintiff. That what Augusto Trinidad occupied was Lot 13-C when it should have been Lot 13-A becomes immaterial when it is considered that while the lots were then designated as Lot 13-A, Lot 13-B and Lot 13-C, obviously Genaro Kausapin and Atty. Joaquin Trinidad and Augusto Trinidad were not fully aware of the exact metes and bounds of each lot. This was also the case when, before the area bought by the plaintiffs was surveyed, the vendor Renato Ramos and the plaintiffs as vendees did not know that the area developed by Augusto Trinidad as a fishpond was within the area sold to the plaintiffs.

Given that the possession by the defendants of the area in question antedates by five years the claim of the plaintiffs to the disputed property, and given that the parties who should have questioned

the entry of the defendants into the property, namely, Genaro Kausapin or Renato Ramos, did not do so, and considering the valuable improvements made by the defendants in the area in dispute, the defendants have a better right to possess the disputed area, even as the area had been included in [the] title issued to the plaintiffs.

WHEREFORE, the complaint is ordered dismissed.

Defendants' counterclaim is likewise ordered dismissed.

SO ORDERED.[9]

Ruling of the Court of Appeals

Respondents filed an appeal before the CA, docketed as CA-G.R. CV No. 92118, arguing that as registered owners of the subject two-hectare property, they have a better right thereto; that petitioners' claim that the subject property was part of a 12-hectare piece of property owned by respondent Felicidad's father Genaro, five hectares of which was allegedly awarded by Genaro to petitioners' father Atty. Trinidad as the latter's attorney's fees in a case, has no basis, as there is no evidence on record to show that Genaro even owned a parcel of land; that in truth, Genaro was a mere tenant of the original owners of the 12-hectare property – Juliana Navarro (Navarro), Pedro Loyola, and Ramos; that eventually, Ramos sold an eight-hectare portion of the property to respondents, which is now the property covered by TCT T-47318 and claimed by petitioners to the extent of two hectares; that apart from a document denominated as "*Kasulatan ng Pagbabahagi*" supposedly executed by Genaro and Atty. Trinidad on October 4, 1977, petitioners have not presented any title or any other documentary proof, such as receipts showing payment of real property taxes, to prove their alleged ownership of the subject property; that respondents cannot be bound by the supposed agreement between Genaro and Atty. Trinidad because it is void since, being a mere tenant of the property, Genaro cannot award the same to Atty. Trinidad; that Genaro's status as a mere tenant is known to Atty. Trinidad, since the latter was Genaro's counsel in a claim involving the

[9] *Id*. at 29-30, 32-34.

subject property docketed as CAR Case No. 585(62), which was eventually terminated by Genaro's execution in 1963 of a "*Kasunduan*", wherein he acknowledged before Ramos and Atty. Trinidad that he was a mere tenant of the Ramos family; that Augusto was a policeman during his lifetime, and he took over the disputed property by force, and respondents – fearing violence and bloodshed – opted to resort to court action instead; and that under the Civil Code,[10] they are protected as the registered owners, and petitioners should be considered intruders and builders in bad faith.

During the pendency of the appeal, Joaquin Ong Trinidad III died and was substituted by his widow and children – herein petitioners Mary Ann Nepomuceno Trinidad, Joaquin Gerard N. Trinidad IV, Jacob Gabriel N. Trinidad and Jered Gyan N. Trinidad.

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[10] Citing the following provision of the Code:

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

Art. 449. He who builds and sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

On March 27, 2012, the CA rendered the assailed judgment, declaring as follows:

In this appeal, Spouses Palad assert their Transfer Certificate of Title No. T-47318 which undoubtedly covers appellees' two-hectare fishpond found within the former's eight-hectare lot. They argue that appellees' predecessors-in-interest, Genaro Kausapin and Atty. Joaquin Trinidad, were never owners of the eight-hectare lot, including the subject realty, as the property was owned by Renato Ramos who sold it to them.

On the other hand, appellees reiterate in their brief that their father possessed the fishpond long before Spouses Palad bought the eight-hectare lot. They also posit that a certificate of title by itself alone does not vest ownership in any person.

We grant the appeal.

Appellants are owners of the eight-hectare lot, including the two-hectare fishpond, by virtue of their Transfer Certificate of Title No. T-47318. *Spouses Esmaquel v. Coprada*, explains why:

> On the other hand, it is undisputed that the subject property is covered by Transfer Certificate of Title No. T-93542, registered in the name of the petitioners. As against the respondent's unproven claim that she acquired a portion of the property from the petitioners by virtue of an oral sale, **the Torrens title of petitioners must prevail. Petitioners' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.**

As a rule, a certificate of title cannot be attacked collaterally. At any rate, in *Spouses Sarmiento et al. v. Court of Appeals et al.*, a counterclaim assailing a certificate of title is deemed a direct attack. x x x

x x x x x x x x x

The burden of proof is on appellees to establish by clear and convincing evidence the ground or grounds for annulling a certificate of title. In *Lasquite et al. v. Victory Hills*:

> The established legal principle **in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his**. It is rather obvious from the foregoing disquisition that respondent failed to dispense such burden. Indeed, the records are replete with proof that respondent declared the lots comprising Lot No. 3050 for taxation purposes only after it had instituted the present case in court. This is not to say of course that tax receipts are evidence of ownership, since they are not, albeit they are good indicia of possession in the concept of owner, for no one would ordinarily be paying taxes for a property not in his actual or at least constructive possession. x x x

Here, appellees offered no evidence, much less, clear and convincing evidence, that Spouses Palad's transfer certificate of title should be annulled. In fact, it is on record that appellees' documents pertain to Lot 13-A, but they occupied Lot 13-C. As the trial court determined, appellees' only basis for claiming the fishpond was their occupation thereof, though mistakenly and the absence of the boundaries of Lots 13-A, 13-B and 13-C. But these matters do not and cannot annul Spouses Palad's transfer certificate of title. They actually imply admission of appellees' intrusion into Lot 13-C under Transfer Certificate of Title No. T-47318 without any right to own or possess it. Truth to tell, the trial court correctly did not set aside the transfer certificate of title. Hence, it remains valid and binding with all its legal effects.

ACCORDINGLY, the appeal is **GRANTED**. The *Decision* dated July 4, 2008 of the Regional Trial Court, Branch 53, Lucena City, in Civil Case No. 92-71 is **REVERSED AND SET ASIDE**. Defendants-appellees Levy Ong Trinidad, Joaquin Trinidad III, Augusto Trinidad II, Augusto Trinidad III and Rohmel Trinidad, their successors-in-interest, privies and heirs are **ordered to vacate the two-hectare fishpond occupied by them in Lot 13-C under Transfer Certificate of Title No. T-47318.** No costs.

SO ORDERED.[11] (Emphasis in the original).

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[11] *Rollo*, pp. 23-27.

Petitioners filed their Motion for Reconsideration,[12] which was denied in the assailed August 24, 2012 Resolution. Hence, the instant Petition.

In a January 27, 2014 Resolution,[13] this Court resolved to give due course to the Petition.

Issues

Petitioners claim that the CA erred:

1. In its ruling that the respondents have a better right of possession over the disputed 2-hectare portion of the 8-hectare property by the mere fact that said disputed portion is covered by a certificate of title in their names;
2. In its ruling that the petitioners offered no evidence that spouses Palad's transfer certificate of title should be annulled, and therefore remains valid and binding with all its legal effects, as it failed to consider evidence showing otherwise;
3. In its ruling that the petitioners should vacate the 2-hectare fishpond, as it failed to consider that the respondents have no right or cause of action against the petitioners to seek the latter's ejectment from the property in question.[14]

Petitioners' Arguments

In their Petition and Reply[15] seeking reversal of the assailed CA dispositions and reinstatement of the RTC's July 4, 2008 Decision dismissing Civil Case No. 92-71, petitioners essentially argue that respondents may not claim ownership of the subject property just because it is embraced within their title, TCT T-47318; that TCT T-47318 is null and void since it is the result of a June 5, 1985 deed of extrajudicial settlement[16] and September 9, 1985 segregation agreement[17] and not a sale between respondents and Ramos;

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[12] CA *rollo*, pp. 107-115.
[13] *Rollo*, pp. 73-74.
[14] *Id*. at 11-12.
[15] *Id*. at 64-70.
[16] *Id*. at 40.
[17] *Id*. at 41.

that since respondent Felicidad was not an heir of one of the original owners of the property – Navarro – as erroneously stated in the deeds of extrajudicial settlement and segregation agreement, said documents are therefore null and void, and could not be the bases for the issuance of TCT T-47318; that the subject property was not included in the July 23, 1985 sale between respondents and Ramos because its inclusion in TCT T-47318 was discovered only after a survey was conducted after the sale; that since respondents are not the owners of the subject property, they have no cause of action against petitioners; and that in their answer with counterclaim, they sought to annul TCT T-47318, claiming that respondents secured same through Felicidad's claim that she is an heir of Navarro – thus, said allegation made through a valid counterclaim constitutes a direct attack upon the validity of TCT T-47318 which is allowed by law.

Respondents' Arguments

In their Comment[18] seeking denial of the Petition, respondents argue that the CA correctly held that TCT T-47318 serves as incontrovertible proof of their indefeasible title to the subject property, as well as their right to possession thereof; that petitioners' claim that their title is void as it arose out of void agreements constitutes a prohibited collateral attack on TCT T-47318; that the issue of validity or nullity of TCT T-47318 cannot be raised, as said issue was not touched upon by the RTC; that TCT T-47318 may not be annulled because petitioners' supposed claim of ownership specifically refers to Lot 13-A, while they wrongly occupied Lot 13-C, which is the subject of TCT T-47318; and that with the finding on record that petitioners wrongly occupied Lot 13-C, they must be ordered to vacate the same and surrender possession to respondents who are the registered owners thereof.

Our Ruling

The Court denies the Petition.

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[18] *Id*. at 47-53.

The fact is undisputed that the subject two-hectare property lies within Lot 13-C which is registered in the name of respondents as TCT T-47318.

The evidence on record also suggests that contrary to petitioners' claim, the subject property constitutes a portion of an eight-hectare parcel of land acquired by respondents from Ramos by purchase in 1985, and was not the result of a June 5, 1985 deed of extrajudicial settlement and September 9, 1985 segregation agreement between the original owners and respondent Felicidad. This is a finding of fact arrived at by both the RTC and the CA – and this is admitted by petitioners in their Petition, which specifically adopted the findings of fact of the RTC on this score.[19]

By adopting the findings of fact of the trial court, petitioners are precluded from further arguing that TCT T-47318 is void on the ground that it was obtained through a simulated extrajudicial settlement agreement; and as far as this Court is concerned, the fact is settled that respondents acquired the property covered by TCT T-47318 by purchase from Ramos. If indeed Felicidad was an heir of any of the original owners of the property, then there would have been no need for her to purchase the same. Besides, the evidence further points to the fact that Felicidad's father Genaro was a mere tenant of the Ramos family and could not have owned the property in question; and this is precisely why, to own it, she had to purchase the same from Ramos.

The CA is therefore correct in its pronouncement – citing *Spouses Esmaquel and Sordevilla v. Coprada*[20] – that TCT T-47318 constitutes evidence of respondents' ownership over the subject property, which lies within the area covered by said title; that TCT T-47318 serves as evidence of indefeasible and incontrovertible title to the property in favor of respondents, whose names appear therein; and that as registered owners, they are entitled to possession of the subject property. As

[19] *Id*. at 9.

[20] 653 Phil. 96, 105 (2010).

against possession claimed by the petitioners, respondents' certificate of title prevails. "[M]ere possession cannot defeat the title of a holder of a registered [T]orrens title x x x."[21]

On the other hand, petitioners' claim – their main defense in the suit – is that their predecessor Augusto was the owner of the subject property. But such claim rests on very shaky ground. First, they claim that the subject property was awarded as attorney's fees in 1977 to Augusto by Genaro. However, in seeking the annulment of respondents' title, they claim at the same time that the property was acquired by Felicidad through inheritance from Navarro, who happens to be the grandmother of Ramos.[22] And yet, at the appeal stage before the CA, they adopt without question the RTC's finding that the subject property was purchased by Felicidad from Ramos. Such a conflicting and flip-flopping stance deserves no serious consideration. Genaro may not dispose of the property which does not belong to him although he may have executed a document awarding the same to Augusto. No one can give that which he does not own – *nemo dat quod non habet*. Finally, petitioners acknowledge that what Genaro supposedly gave Augusto as the latter's attorney's fees was Lot 13-A, while it turned out that what Augusto occupied was Lot 13-C, which is registered in respondents' favor as TCT T-47318. Evidently, Augusto had no right over Lot 13-C which he wrongly occupied; consequently, petitioners, as Augusto's successors-in-interest, have no viable defense to respondents' claim in Civil Case No. 92-71.

Indeed, the only reason why petitioners won their case in the RTC is that in the court's July 4, 2008 Decision it assumed and concluded that Genaro was the owner of the subject property which he awarded to Augusto *via* the supposed October 4, 1977 "*Kasulatan ng Pagbabahagi*" between Genaro and Augusto – when the evidence points to the fact that the property was acquired by respondents through purchase from its original owner, Ramos.

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[21] *Spouses Eduarte v. Court of Appeals,* 323 Phil. 462, 475 (1996).

[22] *Rollo*, p. 40.

Thus, as the CA correctly held, petitioners are mere intruders with respect to the subject property; they have no right to own or possess the same. On the other hand, as registered owners of the subject property, respondents have the right to exercise all attributes of ownership including possession which they cannot do while petitioners remain there.

WHEREFORE, the Petition is **DENIED**. The March 27, 2012 Decision and August 24, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 92118 are **AFFIRMED *IN TOTO***. Petitioners and their heirs, successors-in-interest and privies are ordered to **VACATE** the two-hectare fishpond as well as any other portion of the property covered by Transfer Certificate of Title No. T-47318.

SO ORDERED.

Carpio (Chairperson), Perez,[*] *Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 204172. December 9, 2015]

HON. HERMOGENES E. EBDANE, JR., in his official capacity as Acting Secretary of the Department of Public Works and Highways (DPWH), ATTY. JOEL L. JACOB, in his official capacity as Officer-in-Charge, Legal Service (DPWH), ATTY. OLIVER T. RODULFO, in his official capacity as Head, Internal Affairs Office, (DPWH), and HON. JAIME A. PACANAN, in his official capacity as Regional Director, (DPWH), Regional Office No. VIII, *petitioners, vs.* **ALVARO Y. APURILLO, ERDA P. GABRIANA, JOCELYN S. JO, IRAIDA R. LASTIMADO, and FRANCISCO B. VINEGAS, JR.,** *respondents*.

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[*] Per Special Order No. 2301 dated December 1, 2015.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; MEANS THE OPPORTUNITY TO EXPLAIN ONE'S SIDE OR THE OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— The essence of procedural due process is embodied in the **basic requirement of notice and a real opportunity to be heard**. In administrative proceedings, as in the case at bar, procedural due process simply **means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. x x x In this case, the Court finds that while there were missteps in the proceedings conducted before the DPWH, namely: (*a*) respondents were not made to file their initial comment on the anonymous complaint; and (*b*) no preliminary investigation was conducted before the filing of the Formal Charge against them, contrary to the sequential procedure under the URACCS, they were, nonetheless, accorded a fair opportunity to be heard when the Formal Charge directed them x x x. Accordingly, respondent filed their **first Answer on January 13, 2006,** wherein they **had presented their position before the agency,** and more significantly, **expressly waived their rights to a formal hearing, as they sought instead, that the case against them be decided based on the records submitted** x x x. Hence, whatever procedural lapses the DPWH had committed, the same had been cured by the foregoing filing.

2. ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDY; IF A REMEDY WITHIN THE ADMINISTRATIVE MACHINERY CAN STILL BE RESORTED TO, SUCH REMEDY SHOULD BE EXHAUSTED FIRST BEFORE THE COURT'S JUDICIAL POWER CAN BE SOUGHT.— [H]aving established that there was no violation of respondents' rights to administrative due process, the CA incorrectly exempted respondents from compliance with the rule on exhaustion of administrative remedies. They are therefore required to go through the full course of the administrative process where they are still left

with remedies. As case law states, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Leon Rojas III for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 31, 2012 and the Resolution[3] dated September 28, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 05432, which affirmed the Resolution[4] dated August 5, 2010 of the Regional Trial Court of Tacloban City (RTC), Branch 34 in Civil Case No. 2006-06-75, setting aside the Formal Charge with Preventive Suspension[5] dated December 22, 2005 (Formal Charge) issued by the Department of Public Works and Highways (DPWH) through petitioner — then Acting Secretary Hermogenes

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[1] *Rollo*, pp. 9-36.

[2] *Id.* at 38-52. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Victoria Isabel A. Paredes and Pamela Ann Abella Maxino concurring.

[3] *Id.* at 53-54. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Pamela Ann Abella Maxino and Melchor Q.C. Sadang concurring.

[4] *Id.* at 120-127. Penned by Presiding Judge Frisco T. Lilagan.

[5] Released on January 6, 2006. *Id.* at 66.

E. Ebdane, Jr. (Acting Sec. Ebdane) — against respondents Alvaro Y. Apurillo, Erda P. Gabriana, Jocelyn S. Jo, Iraida R. Lastimado, and Francisco B. Vinegas, Jr. (respondents), who were then DPWH Officials and Bids and Awards Committee (BAC) Members, on due process considerations.

The Facts

On October 17, 2005, Juanito R. Alama (Alama), DPWH Assistant Head of the BAC-Technical Working Group (BAC-TWG), received an anonymous complaint[6] from an alleged concerned employee of the DPWH, Tacloban City, claiming that R.M. Padillo Builders (RMPB), a local contractor, won the bidding for the construction of the Lirang Revetment Project (subject project), despite its non-inclusion in the list of Registered Construction Firms (RCF) which were qualified to bid.[7]

On October 26, 2005, Alama sent a 1st indorsement letter[8] to petitioner Atty. Oliver T. Rodulfo (Atty. Rodulfo), DPWH Head of Internal Affairs Office, stating that under Department Order No. 2, Series of 2001 (DPWH DO No. 2),[9] only contractors duly registered in the RCF and holding a valid Contractor's Registration Certificate issued by the BAC-TWG shall be allowed to participate in any bidding, per the requirement in the Invitation to Apply for Eligibility and to Bid.[10]

On November 8, 2005, Atty. Rodulfo issued a Subpoena[11] which directed Engr. Gervasio T. Baldos (Engr. Baldos), OIC District Engineer of the DPWH Tacloban City Sub-District Engineering Office (DPWH Sub-District Office), to answer/

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[6] See letter received by the DPWH Office on October 21, 2005; *id.* at 67.

[7] *Id.* at 40.

[8] Not attached to the *rollo*.

[9] Entitled "GUIDELINES IN THE ELIGIBILITY PROCESSING OF CONTRACTORS FOR CIVIL WORKS PROJECTS," issued on January 3, 2001.

[10] See Item 2 of DPWH DO No. 2. See also *rollo*, p. 40.

[11] *Rollo*, p. 65.

comment on the anonymous complaint and, accordingly, submit the following documents in relation to the award of the subject project to the allegedly unregistered contractor, namely: (1) Approved BAC Composition for Calendar Year 2005; (2) Invitation to Bid for the Construction of the subject project; (3) Eligibility Screening; (4) Abstract of Bids; (5) Resolution of Award; (6) Contract; (7) Notice of Award; (8) Notice to Proceed; (9) Disbursement Voucher for the Construction of the subject project, if any; and (10) Statement of Work Accomplished as of November, 2005.[12]

Atty. Rodulfo proceeded to investigate on the matter and, thereafter, forwarded his Investigation Report dated November 21, 2005[13] to Acting Sec. Ebdane, finding that RMPB was indeed not a duly registered contractor at the time of the bidding. Atty. Rodulfo, thus, recommended that the officials of the DPWH Sub-District Office be administratively charged with Gross Misconduct and that they be placed on preventive suspension for a period of ninety (90) days.[14]

On **December 22, 2005**, Acting Sec. Ebdane issued the **Formal Charge** against respondents, who were then DPWH Officials and BAC Members, for **Grave Misconduct**. In the said issuance, respondents were: (*a*) **directed to file their answer, together with supporting evidence;** (*b*) **given the option to elect or waive the conduct of a formal investigation**; and (*c*) placed under preventive suspension for a period of ninety (90) days.[15]

In their **Answer with Motion to Dismiss and to Lift Order of Preventive Suspension**[16] (first Answer) filed on **January 13, 2006**, respondents argued, among others, that they were not in any position to answer the Formal Charge against them

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[12] *Id*.

[13] Not attached to the *rollo*.

[14] *Rollo*, p. 41.

[15] *Id.* at 66.

[16] Dated January 13, 2006. *Id*. at 68-72.

due to lack of basis.[17] In this relation, they pointed out that aside from the fact that RMPB had firmly expressed in its duly sworn letter of intent that it was a registered contractor with the DPWH, it was not their duty to determine whether a contractor is a registered contractor with the DPWH Notarial Registry of Civil Works Contractors.[18] As such, respondents prayed for the dismissal of the Formal Charge and the lifting of the preventive suspension order against them. Further, **they expressly waived their rights to a formal hearing, and sought instead, that the case against them be decided based on the records submitted.**[19]

Five (5) months later,[20] respondents were re-issued the same Formal Charge, to which they filed their Answer with Manifestation[21] (second Answer), reiterating their previous statements, and further alleging that the DPWH Sub-District Office never required them to submit a counter-affidavit/comment, as in fact, it was only Engr. Baldos who had been issued a Subpoena to submit an answer/ explanation regarding the alleged irregularities in the bidding for the subject project.[22] Moreover, respondents averred that the Formal Charge served upon them did not state the nature and substance of the charge/s hurled against them. **For these reasons, respondents demanded that a formal investigation be conducted**.[23]

Without waiting for the DPWH's action, respondents filed on June 27, 2006 a petition for *certiorari* and prohibition[24] (June 27, 2006 petition) before the RTC, docketed as Civil Case No.

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[17] *Id.* at 69.

[18] *Id.* at 69-70.

[19] *Id.* at 72.

[20] Or on June 7, 2006. See *id.* at 73.

[21] Filed on June 13, 2006. *Id.* at 73-74.

[22] *Id.* at 73.

[23] *Id.* at 74.

[24] With prayer for the issuance of a temporary restraining order and/ or preliminary injunction dated June 27, 2006. *Id.* at 55-62.

2006-06-75, alleging that there was a violation of their right to due process since: (*a*) they were not made to comment on the anonymous complaint;[25] and (*b*) no preliminary investigation was conducted prior to the issuance of the Formal Charge.[26]

On June 28, 2006, the RTC-Branch 9 issued a temporary restraining order[27] against the implementation of the preventive suspension order (Formal Charge), which was later converted by the RTC-Branch 34 to a writ of preliminary injunction[28] on July 12, 2006.[29]

On December 18, 2006, petitioners filed a Motion to Dismiss,[30] claiming non-exhaustion of administrative remedies and failure to state a cause of action,[31] but was denied in an Order[32] dated July 28, 2008;[33] hence, they filed their comment[34] dated September 25, 2008.

The RTC Ruling

In a Resolution[35] dated August 5, 2010, the RTC-Branch 34 set aside the Formal Charge. It held that respondents' rights to administrative due process were violated when they were deprived of the opportunity to file their comment/memorandum prior to, or during the preliminary or fact-finding investigation conducted by Atty. Rodulfo,[36] which violation was deemed to

[25] See *id.* at 60-61.

[26] See *id.* at 58-59.

[27] *Rollo*, pp. 76-77. Penned by Vice-Executive Judge Rogelio C. Sescon.

[28] *Id.* at 85-86. Penned by Presiding Judge Frisco T. Lilagan.

[29] Erroneously dated as "July 12, 2005" in the CA Decision; see *id.* at 43.

[30] Dated December 7, 2006. *Id.* at 78-84.

[31] *Id.* at 78.

[32] *Id.* at 89-95.

[33] See *id.* at 42-45.

[34] With Special and Affirmative Defenses. *Id.* at 96-110.

[35] *Id.* at 120-127.

[36] See *id.* at 126.

involve a purely legal question, hence, an exception to the rule on exhaustion of administrative remedies.[37] However, the RTC clarified that its ruling was not intended to prevent or avert the DPWH from pursuing any separate administrative action against respondents, pointing out that they have not been absolved from any administrative liability.[38]

Dissatisfied, petitioners appealed to the CA, claiming, among others, that respondents' June 27, 2006 petition before the RTC was filed out of time, as they only had until March 11, 2006, *i.e.*, sixty (60) days from the day they first received the Formal Charge on January 10, 2006, to do so.[39]

The CA Ruling

In a Decision[40] dated May 31, 2012, the CA affirmed the RTC Resolution. On the procedural error, it held that petitioners were estopped from raising the untimely filing of the June 27, 2006 petition by reason of their silence or failure to object to the same before the RTC.[41] On the merits, it ruled that the issuance of the Formal Charge against respondents, without complying with the mandated preliminary investigation, or at least giving respondents the opportunity to comment or submit their counter-affidavits, violated their due process rights.[42] In this regard, the CA found that Section 11, Rule II of the Uniform Rules on Administrative Cases in the Civil Service[43] (URACCS) requires that respondents be given the opportunity to comment and explain their side during a preliminary investigation conducted

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[37] *Id.* at 123.

[38] *Id.* at 126-127.

[39] Citing Section 4, Rule 65 of the Rules of Court. See *id.* at 46.

[40] *Id.* at 38-52.

[41] *Id.* at 46.

[42] *Id.* at 49.

[43] Civil Service Commission Resolution No. 99-1936 entitled "UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE" (approved on August 31, 1999).

prior to the issuance of a Formal Charge and that such comment is different from the Answer that respondents may file thereafter.[44] Moreover, the CA pronounced that a violation of the right to due process is an admitted exception to the rule of exhaustion of administrative remedies.[45]

Aggrieved, petitioners moved for reconsideration,[46] which was denied in a Resolution[47] dated September 28, 2012; hence, this petition.

The Issue Before the Court

The linchpin issue in this case is whether or not respondents' due process rights were violated.

The Court's Ruling

The petition is meritorious.

The essence of procedural due process is embodied in the **basic requirement of notice and a real opportunity to be heard.** In administrative proceedings, as in the case at bar, procedural due process simply **means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of**. "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[48]

In *Vivo v. Philippine Amusement and Gaming Corporation,*[49] the Court ruled that any procedural defect in

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[44] *Rollo*, p. 48.

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

[46] Copy of the motion for reconsideration is not attached to the *rollo*.

[47] *Rollo*, pp. 53-54.

[48] *Department of Agrarian Reform v. Samson,* 577 Phil. 370, 380 (2008), citing *Casimiro v. Tandog*, 498 Phil. 660, 666 (2005).

[49] G.R. No. 187854, November 12, 2013, 709 SCRA 276.

the proceedings taken against the government employee therein was cured by his filing of a motion for reconsideration and by his appealing the adverse result to the administrative agency (in that case, the Civil Service Commission [CSC]).[50] Also, in *Gonzales v. CSC*,[51] it was held that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard.[52] Similarly, in *Autencio v. Mañara*,[53] the court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.[54]

In this case, the Court finds that while there were missteps in the proceedings conducted before the DPWH, namely: (*a*) respondents were not made to file their initial comment on the anonymous complaint; and (*b*) no preliminary investigation was conducted before the filing of the Formal Charge against them, contrary to the sequential procedure under the URACCS,[55]

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[50] See *id.* at 285.

[51] 524 Phil. 271 (2006).

[52] *Id.* at 278.

[53] 489 Phil. 752 (2005).

[54] *Id.* at 760-761.

[55] "The [URACCS] lays down the procedure to be observed in issuing a formal charge against an erring employee, to wit:

First, the complaint. A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath. Except when otherwise provided for by law, an administrative complaint may be filed at anytime with the Commission, proper heads of departments, agencies, provinces, cities, municipalities and other instrumentalities.

Second, the Counter-Affidavit/Comment. Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit Counter-Affidavit/Comment under oath within three days from receipt.

they were, nonetheless, accorded a fair opportunity to be heard when the Formal Charge directed them:

> Wherefore, you are hereby directed to submit within ten (10) days from receipt hereof your detailed answer to the above stated charge in writing and under oath, together with whatever evidence you may desire to present in support of your defense.
>
> In your answer, you should state whether you elect to have a formal investigation of the charge against you or waive your right to such an investigation.
>
> If you fail to submit your answer within the period aforestated, you will be deemed in default and the case against you will be decided on the basis of the available records.
>
> x x x x x x x x x[56]

Accordingly, respondent filed their **first Answer on January 13, 2006,** wherein they **had presented their position before the agency,** and more significantly, **expressly waived their rights to a formal hearing, as they sought instead, that the case against them be decided based on the records submitted**:

Third, Preliminary Investigation. A Preliminary investigation involves the *ex parte* examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be considered as a waiver thereof.

Fourth, Investigation Report. Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the investigation report and the complete records of the case to the disciplining authority.

Fifth, Formal Charge. If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow. In the absence of a *prima facie* case, the complaint shall be dismissed. (*Garcia v. Molina*, 642 Phil. 6, 19-20 [2010], emphases supplied.)

[56] *Rollo*, p. 66.

PRAYER

WHEREFORE, facts and premises, respondents most respectfully pray to the Hon. Secretary that the instant Formal Charge be **DISMISSED**, and pending such dismissal, respondents pray that the Order for the Preventive Suspension be **LIFTED** and **SET ASIDE**. **Herein respondents hereby waive their rights to a formal hearing and that the said case be decided based on records submitted**.

MOST RESPECTFULLY SUBMITTED.[57] (Emphasis and underscoring supplied)

Hence, whatever procedural lapses the DPWH had committed, the same had already been cured by the foregoing filing.

It deserves mentioning that while the Court, in *Garcia v. Molina*,[58] had, on due process considerations, previously set aside formal charges for having been issued without the benefit of a prior preliminary investigation under the URACCS, said ruling is inapplicable to this case, since the government employees who were charged therein did not waive their right to such hearing, unlike the present case where respondents themselves filed an express waiver to a formal hearing as above-shown.

Thus, having established that there was no violation of respondents' rights to administrative due process, the CA incorrectly exempted respondents from compliance with the rule on exhaustion of administrative remedies.[59] They are therefore required to go through the full course of the administrative process where they are still left with remedies. As case law states, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion

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[57] *Id.* at 72.

[58] *Supra* note 55.

[59] "[T]his Court has allowed certain exceptions to the doctrine of exhaustion of administrative remedies, such as: 1) when there is a violation of due process; x x x." (*Laguna CATV Network, Inc. v. Maraan*, 440 Phil. 734, 742 (2002).

before seeking judicial intervention.[60] If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.[61]

WHEREFORE, the petition is **GRANTED**. The Decision dated May 31, 2012 and the Resolution dated September 28, 2012 of the Court of Appeals in CA-G.R. SP No. 05432 are hereby **SET ASIDE**. Accordingly, the case is **REMANDED** to the Department of Public Works and Highways Tacloban City Sub-District Office for the continuation of the administrative proceedings against respondents Alvaro Y. Apurillo, Erda P. Gabriana, Jocelyn S. Jo, Iraida R. Lastimado, and Francisco B. Vinegas, Jr.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204275. December 9, 2015]

LILIOSA C. LISONDRA, *petitioner, vs.* **MEGACRAFT INTERNATIONAL CORPORATION and SPOUSES MELECIO AND ROSEMARIE OAMIL,** *respondents.*

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[60] *Smart Communications, Inc. v. Aldecoa*, G.R. No. 166330, September 11, 2013, 705 SCRA 392, 413, citation omitted.

[61] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 280.

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; MAY BE RELAXED IN ORDER TO GIVE FULL MEANING TO THE CONSTITUTIONAL MANDATE OF AFFORDING FULL PROTECTION TO LABOR; CASE AT BAR.—** Initially, the Court notes that the present petition itself barely complied with paragraph 2 of Section 1, Rule 65, that 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 x x x." The records of this case show that copies of the decision of the Labor Arbiter and the resolutions of the NLRC, 7th Division being assailed before the Court of Appeals were not attached to the petition. That alone would have been enough cause for this case to be dismissed outright. However, the Court finds that there is sufficient ground in this case for leniency in applying the rules of procedure, considering the opposing decisions of the Labor Arbiter and the NLRC, 7th Division. Since "technical rules of procedure are not to be strictly interpreted and applied in a manner that would defeat substantial justice or be unduly detrimental to the work force," the Court may opt to relax these rules "in order to give full meaning to the constitutional mandate of affording full protection to labor." What is at stake in this case is petitioner's livelihood itself. The Court cannot allow the same to be taken away from her without even a chance at a full and judicious review of the case by the Court of Appeals. Thus, there is a need to apply such leniency in this case in order to serve the ends of justice.

2. **ID.; CIVIL PROCEDURE; SERVICE OF PLEADINGS, JUDGMENTS, AND OTHER PAPERS; PROOF OF SERVICE; TO COMPLY WITH THE RULE ON PROPER PROOF OF SERVICE WHEN SERVICE IS MADE BY REGISTERED MAIL, IT IS REQUIRED THAT THE AFFIDAVIT OF SERVICE AND THE REGISTRY RECEIPT BE ATTACHED TO THE PLEADING.—** The requirement on *proof of service* of pleadings, judgments and other papers is provided under Section 13, Rule 13 of the Rules of Court x x x. Under this provision, 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. In this case, the Court of Appeals itself acknowledged that the petition was accompanied by the affidavit of service **and** registry receipts. The Court notes that mails sent thru the post office are very rarely, if indeed they even happen, received by the intended recipient on the same day they were posted. The Rule itself acknowledges this, hence, the need to specify that "[t]he registry return card shall be filed immediately upon its receipt by the sender." The more logical reading of the provision would be to require that the affidavit of service and registry receipt be attached to the pleading and such would comply with the rule on proper proof of service. However, a party is further required to submit the registry return card to the court "immediately upon its receipt by the sender."

APPEARANCES OF COUNSEL

Franklin S. Manching for petitioner.
Edward Anthony Ramos for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals' Resolutions in CA-G.R. SP No. 06178 dated 15 September 2011[1] and 10 October 2012,[2] dismissing petitioner Liliosa C. Lisondra's petition for *certiorari* under Rule 65, and denying her motion for reconsideration, respectively.

The Facts

The petition stems from a case for illegal dismissal filed by petitioner against Megacraft International Corporation

[1] *Rollo*, pp. 23-26.

[2] *Id*. at 28-29.

(Megacraft) and Spouses Melecio and Rosemarie Oamil (Spouses Oamil) before the National Labor Relations Commission (NLRC), 7th Division, Cebu City.

On 2 June 2010, Labor Arbiter Emiliano C. Tiongco, Jr. rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the constructive dismissal of complainant.
>
> Respondents Megacraft and [S]pouses Melecio and Rosemarie Oamil are hereby ordered to jointly and severally pay complainant Lisondra the following:
>
> 1. Backwages ---------- ₱146,000.00
> 2. Separation Pay ---------- ₱ 30,000.00
> 3. Pro. 13th month pay 2009 ---------- ₱ 7,291.62
> 4. Moral Damages ---------- ₱ 30,000.00
>
> ₱213,291.62
>
> 5. Attorney's Fees ---------- ₱ 21,329.16
>
> Total ---------- ₱234,620.78
>
> SO ORDERED.[3]

Respondents appealed to the NLRC.

On 31 January 2011, the NLRC, 7th Division promulgated a Resolution dismissing the appeal:

> WHEREFORE, the appeal of respondents is DISMISSED for failure to state the material date when they received the appealed Decision and for failure to comply with the requisites for the posting of a surety bond.
>
> SO ORDERED.[4]

Respondents then filed a Motion for Reconsideration. On 31 March 2011, the NLRC, 7th Division reversed its earlier resolution:

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[3] *Id*. at 11-12.

[4] *Id*. at 12.

WHEREFORE, premises considered, the decision appealed from is hereby REVERSED AND SET ASIDE and a NEW ONE ENTERED declaring that complainant was not constructively dismissed herself [sic] from employment. Consequently, there is no basis for the grant of separation pay, backwages, moral damages and attorney's fees.

SO ORDERED.[5]

Petitioner moved for reconsideration of the 31 March 2011 Decision, which the NLRC, 7th Division denied in its 25 May 2011 Resolution.[6]

Petitioner then filed a petition for *certiorari* under Rule 65[7] before the Court of Appeals.

The Ruling of the Court of Appeals

In the assailed 15 September 2011 Resolution, the Court of Appeals dismissed the petition because it suffered from the following "congenital infirmities":[8]

1. [T]here was no proper proof of *service* of the Petition to the agency *a quo* and to the adverse parties. While petitioner filed her Affidavit of Service, and incorporated the registry receipts, petitioner still failed to comply with the requirement on proper proof of service. Post office receipt is not the required proof of service by registered mail. *Section 10, Rule 13* of the 1997 Rules of Civil Procedure specifically stated that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered as sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the *delivery* of said mail matter by the post office of the addressee;

2. [W]hile the Petition indicated service of a copy thereof to the respondent's counsel, the Petition failed to incorporate

[5] *Id*. at 13.

[6] *Id*.

[7] *Id*. at 36-61.

[8] *Id*. at 23.

therein a written explanation why the preferred personal mode of service to the *agency a quo* under *Section 11, Rule 13* of of the 1997 Rules of Civil Procedure was not availed of;

3. [P]etitioner's counsel failed to indicate on the Petition his Roll of Attorney's Number, in violation of Bar Matter No. 1132 dated November 12, 2002;

4. [T]he Notarial Certificate in the Verification and Certification of Non-Forum Shopping did not contain the province or city where the notary public was commissioned, in violation of *Section 2 (c), Rule VIII* of the 2004 Rules on Notarial Practice; and

5. [W]hile petitioner resorted to judicial review of the March 31, 2011 Decision and the May 25, 2011 Resolution of the NLRC, a *quasi*-judicial body, under Rule 65 of the 1997 Rules of Civil Procedure, she failed to implead the NLRC as public respondent in the instant Petition, in transgression of *Section 5, Rule 65* of the 1997 Rules of Civil Procedure.[9]

Petitioner moved for reconsideration.[10] On 10 October 2012, the Court of Appeals promulgated the assailed resolution denying the motion for reconsideration for lack of merit.[11]

The Issue

The issue in this case is whether the Court of Appeals erred in dismissing the petition for *certiorari* filed by petitioner.

The Court's Ruling

The petition is granted.

Initially, the Court notes that the present petition itself barely complied with paragraph 2 of Section 1, Rule 65, that 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 x x x."

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[9] *Id*. at 24-25.

[10] *Id*. at 30-34.

[11] *Id*. at 29.

The records of this case show that copies of the decision of the Labor Arbiter and the resolutions of the NLRC, 7th Division being assailed before the Court of Appeals were not attached to the petition. That alone would have been enough cause for this case to be dismissed outright.

However, the Court finds that there is sufficient ground in this case for leniency in applying the rules of procedure, considering the opposing decisions of the Labor Arbiter and the NLRC, 7th Division.

Since "technical rules of procedure are not to be strictly interpreted and applied in a manner that would defeat substantial justice or be unduly detrimental to the work force,"[12] the Court may opt to relax these rules "in order to give full meaning to the constitutional mandate of affording full protection to labor."[13]

What is at stake in this case is petitioner's livelihood itself. The Court cannot allow the same to be taken away from her without even a chance at a full and judicious review of the case by the Court of Appeals. Thus, there is a need to apply such leniency in this case in order to serve the ends of justice.

Proof of Service

The Court of Appeals erred in ruling that "while petitioner filed her Affidavit of Service, and incorporated the registry receipts, petitioner still failed to comply with the requirement on proper proof of service."[14]

The requirement on *proof of service* of pleadings, judgments and other papers is provided under Section 13, Rule 13 of the Rules of Court, which states:

SEC. 13. *Proof of service.*—Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full

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[12] *PNOC Dockyard and Engineering Corporation v. National Labor Relations Commission,* 353 Phil. 431, 445 (1998).

[13] *Id.*

[14] *Rollo*, p. 24.

statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. *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 of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Emphasis supplied)

Under this provision, 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.[15]

In this case, the Court of Appeals itself acknowledged that the petition was accompanied by the affidavit of service **and** registry receipts.[16]

The Court notes that mails sent thru the post office are very rarely, if indeed they even happen, received by the intended recipient on the same day they were posted. The Rule itself acknowledges this, hence, the need to specify that "[t]he registry return card shall be filed immediately upon its receipt by the sender." The more logical reading of the provision would be to require that the affidavit of service and registry receipt be attached to the pleading and such would comply with the rule on proper proof of service. However, a party is further required to submit the registry return card to the court "immediately upon its receipt by the sender."[17]

In *Province of Leyte v. Energy Development Corporation*,[18] the Court explained the purpose for the rule:

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[15] *Cruz v. Court of Appeals,* 436 Phil. 641, 652 (2002). See also *Fortune Life Insurance Company, Inc. v. Commission on Audit,* G.R. No. 213525, 27 January 2015.

[16] *Rollo*, p. 24

[17] Section 13, Rule 13, Rules of Court.

[18] G.R. No. 203124, 22 June 2015.

Essentially, the purpose of this rule is to apprise such party of the pendency of an action in the CA. Thus, if such party had already been notified of the same and had even participated in the proceedings, such purpose would have already been served.[19]

In this case, respondents were informed and even filed their Comment to the petition.[20] Thus, the purpose of the rule had been achieved. It would have been "more prudent for the Court [of Appeals] to excuse a technical lapse and afford the parties a substantive review of the case in order to attain the ends of justice than to dismiss the same on mere technicalities."[21]

Written Explanation

Next, the Court of Appeals dismissed the petition on account of petitioner's failure to incorporate a written explanation on why the NLRC's copy was not personally served to the agency.

Petitioner explained in her Motion for Reconsideration that her former counsel had died, which gave her little time to find and engage the services of her present counsel before the lapse of the period for filing the petition.[22] That day that the pleadings were sent via registered mail was already the last day of filing, and with heavy rains at that time, her counsel had anticipated that they would not be able to beat the deadline in filing the petition before the Court of Appeals, prompting her counsel to resort to registered mail.

Other grounds for dismissal

As to the supposed failure to implead the NLRC, the Court finds that the NLRC was, in fact, impleaded in the case, based on the body of the petition.[23] Under the section on *Parties*, the

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[19] *Id*.

[20] *Rollo*, p. 16.

[21] *Province of Leyte v. Energy Development Corporation, supra* note 18, citing *Barra v. Civil Service Commission,* G.R. No. 205250, 18 March 2013, 693 SCRA 563.

[22] *Rollo*, p. 31.

[23] *Id*. at 32.

NLRC was named as one of the parties to the case.[24] Clearly, the failure to include public respondent's name in the title was mere inadvertence.

The other ground cited by the Court of Appeals, *i.e.*, counsel's failure to indicate his roll number and the place of the notary public's commission, does not affect the merits of the petition. The appellate court could have simply asked petitioner's counsel to submit the information instead of dismissing the case outright. Likewise, we deem that petitioner should not be penalized for the omissions of her counsel and deserves to have her case properly ventilated at the appellate court.

A last word

Counsel's actions are binding on his client. Petitioner in this case would have had her entire case thrown out, with all hope for proper review and determination lost, through no fault of her own but merely because of her counsel's carelessness in preparing and filing the pleadings. It is only the Court's discretion that petitioner's cause needs a chance to be properly reviewed and reevaluated that has kept this case alive.

Counsel is therefore reminded of his duty to "serve his client with competence and diligence"[25] and ensure that the pleadings he files comply with all the requirements under the pertinent rules.

WHEREFORE, the petition is **GRANTED**. The Resolutions of the Court of Appeals dated 15 September 2011 and 10 October 2012 in CA-G.R. SP No. 06178 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals-Cebu City for disposition on the merits.

SO ORDERED.

Del Castillo, Perez,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[24] *Id*. at 38.

[25] Canon 18, *Code of Professional Responsibility*.

[*] Designated acting member per Special Order No. 2301 dated 1 December 2015.

FIRST DIVISION

[G.R. No. 206942. December 9, 2015]

VICENTE C. TATEL, *petitioner, vs.* **JLFP INVESTIGATION AND SECURITY AGENCY, INC., JOSE LUIS F. PAMINTUAN, and/or PAOLO C. TURNO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; THE BURDEN OF PROVING THAT AN EMPLOYEE WAS NOT DISMISSED OR, IF DISMISSED, HIS DISMISSAL WAS NOT ILLEGAL, RESTS ON THE EMPLOYER.— The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal, fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal. The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive, and convincing. x x x In this case, respondents have adequately discharged this burden, proving that they **did not dismiss** Tatel. Accordingly, the burden of proof has shifted to the latter to establish otherwise, which he, however, failed to do. Apart from mere allegations, Tatel was unable to proffer any evidence to substantiate his claim of dismissal. On the contrary, records are bereft of any indication that he was prevented from returning to work or otherwise deprived of any work assignment by respondents.

2. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; TEMPORARY "OFF-DETAIL" OR THE PERIOD OF TIME SECURITY GUARDS ARE MADE TO WAIT UNTIL THEY ARE TRANSFERRED OR ASSIGNED TO A NEW POST OR CLIENT DOES NOT CONSTITUTE CONSTRUCTIVE DISMISSAL, SO LONG AS SUCH STATUS DOES NOT CONTINUE BEYOND SIX MONTHS.— Specifically with respect to cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure,

but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six (6) months. The *onus* of proving that there is no post available to which the security guard can be assigned rests on the employer.

3. **ID.; ID.; ID.; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED SHALL BE ENTITLED TO EITHER BACKWAGES OR SEPARATION PAY.—** [S]ince Tatel was not dismissed, he is not entitled to backwages and separation pay. Article 293 of the Labor Code of the Philippines states that "[i]n cases of regular employment, the employer shall not terminate the services of [an] employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."** As such, there being no dismissal in this case, petitioner is not entitled to either backwages or separation pay.

4. **ID.; ID.; ID.; JUST CAUSES; ABANDONMENT OF WORK; ELEMENTS.—** To constitute abandonment of work, two (2) elements must be present: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The burden to prove whether the employee abandoned his or her work rests on the employer.

5. **ID.; ID.; ID.; ID.; ID.; TO CONSTITUTE ABANDONMENT, THERE MUST BE CLEAR PROOF OF DELIBERATE AND UNJUSTIFIED INTENT TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP.—** The mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment. Abandonment is a matter

of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. The operative act is still the employee's ultimate act of putting an end to his employment. In this case, respondents failed to discharge the burden required of them to prove that Tatel had abandoned his work. In fact, the filing of a complaint for illegal dismissal is a proof of Tatel's desire to return to work, thus, effectively negating any suggestion of abandonment.

APPEARANCES OF COUNSEL

DB LAW PARTNERSHIP for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is the motion for reconsideration[1] filed by respondents JLFP Investigation and Security Agency, Inc. (JLFP), Jose Luis F. Pamintuan (Pamintuan), and/or Paolo C. Turno (Turno), praying that the Court reconsider its Decision[2] dated February 25, 2015 rendered in this case, which found herein petitioner Vicente C. Tatel (Tatel) to have been constructively dismissed and accordingly, directed respondents to pay him the monetary awards pertinent thereto.

The Facts

On March 14, 1998, JLFP, a business engaged as a security agency, hired Tatel as one of its security guards.[3]

Tatel alleged that he was last posted at BaggerWerken Decloedt En Zoon (BaggerWerken) located at the Port Area

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[1] Dated April 21, 2015. *Rollo,* pp. 258-271.

[2] *Id*. at 245-255.

[3] *Id*. at 25.

in Manila.[4] He was required to work twelve (12) hours everyday from Mondays through Sundays and received only ₱12,400.00 as monthly salary.[5] On October 14, 2009, Tatel filed a complaint[6] before the National Labor Relations Commission (NLRC) against JLFP and its officer, respondent Pamintuan,[7] as well as SKI Group of Companies (SKI) and its officer, Joselito Dueñas,[8] for underpayment of salaries and wages, non-payment of other benefits, 13th month pay, and attorney's fees *(underpayment case)*.[9]

On October 24, 2009, Tatel was placed on "floating status";[10] thus, on May 4, 2010, or after the lapse of six (6) months therefrom, without having been given any assignments, he filed another complaint[11] against JLFP and its officers, respondent Turno[12] and Jose Luis Fabella,[13] for illegal dismissal, reinstatement, backwages, refund of cash bond deposit amounting to ₱25,400.00, attorney's fees, and other money claims *(illegal dismissal case)*.[14]

In their defense,[15] respondents JLFP, Pamintuan, and Turno (respondents) denied that Tatel was dismissed and averred that

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[4] *Id*.

[5] *Id*. at 10. (The monthly salary was mistakenly indicated by the CA in the amount of ₱6,200.00; see *id*. at 25.)

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

[7] Designated as former Chairman and President of JLFP. See *id*. at 47.

[8] Designated as Project Manager of SKI. See *id*. at 141.

[9] See *id*. at 104.

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

[11] *Id*. at 108-109.

[12] Designated as incumbent President of JLFP. *Id*. at 46 and 81.

[13] Designated as incumbent Manager of JLFP. See records, Vol. 1 pp. 4 and 65.

[14] See *rollo,* p. 108.

[15] See Position Paper for Respondents dated June 23, 2010; records, Vol. 1, pp. 18-29.

they removed the latter from his post at BaggerWerken on August 24, 2009 because of several infractions he committed while on duty. Thereafter, he was reassigned at SKI from September 16, 2009 to October 12, 2009, and last posted at IPVG[16] from October 21 to 23, 2009.[17]

Notwithstanding the pendency of the *underpayment case,* respondents sent a Memorandum[18] dated November 26, 2009 (November 26, 2009 Memorandum) directing Tatel to report back to work, noting that the latter last reported to the office on October 26, 2009. However, despite receipt of the said memorandum, respondents averred that Tatel ignored the same and failed to appear; hence, he was deemed to have abandoned his work.[19] Moreover, respondents pointed out that Tatel made inconsistent statements when he declared in the *underpayment case* that he was employed in March 1997 with a salary of ₱12,400.00 per month and dismissed on October 13, 2009, while declaring in the *illegal dismissal case* that his date of employment was March 14, 1998, with a salary of ₱6,200.00 per month, and that he was dismissed on October 24, 2009.[20]

In his reply,[21] Tatel admitted having received on December 11, 2009 the November 26, 2009 Memorandum directing him to report back to work for reassignment. However, when he went to the JLFP office, he was merely advised to "wait for possible posting."[22] He repeatedly went back to the office for reassignment, but to no avail. He likewise refuted respondents' claim that he abandoned his work, insisting that after working for JLFP for more than eleven (11) years, it was illogical for

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[16] Complete name of IPVG is not found in the records.

[17] See records, Vol. 1, p. 20. See also *rollo,* p. 48.

[18] *Rollo,* p. 106.

[19] Records, Vol. 1, p. 24.

[20] *Id.* at 22-23. See also *rollo,* pp. 104 and 108.

[21] Dated July 2, 2010. *Rollo,* pp. 117-118.

[22] *Id.* at 117.

him to refuse any assignments, more so, to abandon his work and security of tenure without justifiable reasons.[23]

The Labor Arbiter's Ruling

In a Decision[24] dated September 20, 2010, the Labor Arbiter (LA) dismissed Tatel' s illegal dismissal complaint for lack of merit.[25] The LA did not give credence to Tatel's allegation of dismissal in light of the inconsistent statements he made under oath in the two (2) labor complaints he had filed against the respondents. The LA noted that said inconsistent statements "relate not only to the dates that he was hired and supposedly fired but, more glaringly, to the amount of his monthly salaries."[26] It also observed that Tatel failed to explain said inconsistencies.

Aggrieved, Tatel appealed[27] to the NLRC.

The NLRC Ruling

In a Decision[28] dated February 9, 2011, the NLRC reversed and set aside the LA's Decision and found Tatel to have been illegally dismissed. Consequently, it directed respondents to reinstate him to his last position without loss of seniority or diminution of salary and other benefits, as well as to pay him the following: *(a)* backwages from the time of his illegal dismissal on August 24, 2009 until finality of the Decision; (*b)* underpaid wages computed for a period of three (3) years prior to the filing of the complaint until finality; *(c)* cash bond deposit refund amounting to ₱25,400.00; and (*d*) attorney's fees equivalent to ten percent (10%) of the total award. It likewise ruled that if reinstatement was no longer viable due to the strained relationship between the parties, respondents are liable for separation pay

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[23] *Id*. at 117-118.

[24] *Id*. at 129-133.

[25] *Id*. at 133.

[26] *Id*. at 132.

[27] See Memorandum of Appeal dated September 30, 2010; *id.* at 134-138.

[28] *Id*. at 85-93.

equivalent to one (1) month's salary for every year of service computed from the time of Tatel's employment on March 14, 1998 until finality of the Decision. All other claims were denied for lack of merit.[29]

In so ruling, the NLRC rejected respondents' defense that Tatel abandoned his work, finding no rational explanation as to why an employee, who had worked for more than ten (10) years for his employer, would just abandon his work and forego whatever benefits were due him for the length of his service.[30] Similarly, it debunked the claim of abandonment of work for failure of respondents to prove by substantial evidence the elements thereof, *i.e., (a)* that the employee must have failed to report for work or must have been absent without valid or justifiable reason, and *(b)* there must have been a clear intention to sever the employer-employee relationship as manifested by overt acts.[31]

Moreover, the NLRC ruled that Tatel's dismissal was not constructive but actual, and considered his being pulled out from his post on August 24, 2009 as the operative act of his dismissal. It likewise found no just and valid ground for Tatel's dismissal; neither was procedural due process complied with to effectuate the same.[32]

Respondents' motion for reconsideration[33] was denied in a Resolution[34] dated March 31, 2011. Dissatisfied, they elevated the case to the CA *via* petition for *certiorari*[35] on June 10, 2011. Meanwhile, preexecution conferences were held at the NLRC,[36] and on July 29, 2011, respondents filed a Motion for

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[29] *Id*. at 92-93.

[30] *Id*. at 87.

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

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

[33] Dated February 25, 2011. Records, Vol. 1, pp. 129-147.

[34] *Rollo,* pp. 96-98.

[35] *Id*. at 43-80.

[36] See records, Vol. 1, p. 310.

Computation,[37] alleging that Tatel failed to report back to work despite the Return-to-Work Order[38] dated February 22, 2011, claiming "strained relations" with respondents, and manifesting that he was already employed with another company at the time he received the aforesaid order.[39]

The CA Ruling

In a Decision[40] dated November 14, 2012, the CA reversed and set aside the NLRC's February 9, 2011 Decision and reinstated the LA's September 20, 2010 Decision dismissing the illegal dismissal complaint filed by Tatel.[41] Finding grave abuse of discretion on the part of the NLRC, the CA instead concurred with the stance of the LA that Tatel's inconsistent statements cannot be given weight *vis-a-vis* the evidence presented by the respondents.[42] In this regard, the CA declared that if Tatel could not be truthful about the most basic information or explain such inconsistencies, the same may hold true for his claim for illegal dismissal.[43]

Further, the CA rejected the NLRC's finding that the operative act of Tatel's dismissal was the act of pulling him out from his assignment on **August 24, 2009** when in the complaint sheets of both the *illegal dismissal case* and the *underpayment case,* Tatel claimed that he was dismissed on **October 13, 2009** and **October 24, 2009,** respectively.[44] It noted that the NLRC failed to consider that Tatel was subsequently reassigned to

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[37] *Id*. at 310-312.

[38] *Id*. at 122.

[39] *Id*. at 311.

[40] *Rollo,* pp. 24-39. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring.

[41] *Id*. at 38-39.

[42] *Id*. at 34.

[43] *Id*. at 36.

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

SKI from September 16, 2009 to October 12, 2009, and thereafter, to IPVG from October 21 to 23, 2009, which Tatel never disputed nor denied.[45]

Corollary thereto, the CA found that Tatel ignored the November 26, 2009 Memorandum directing him to report to work for possible reassignment, signifying that he abandoned his work and that, consequently, there was no dismissal to begin with.[46] That he was given subsequent postings clearly manifest that there was no intention to dismiss him, hence, he could not have been illegally dismissed.[47]

Tatel moved for reconsideration,[48] which was denied in a Resolution[49] dated April 22, 2013; hence, he filed a petition for review on *certiorari* before the Court.

Proceedings Before the Court

In a Decision[50] dated February 25, 2015, the Court granted Tatel's petition and found that he was constructively dismissed, reversing the CA's issuances and reinstating the NLRC's Decision, with the modification reckoning the computation of backwages from the date of Tatel's constructive dismissal on October 24, 2009 until finality of the Court's Decision, computed at ₱12,400.00 per month.

Undaunted, respondents moved for reconsideration,[51] maintaining its position that Tatel was not constructively dismissed and that it was the latter who had, in fact, abandoned his employment. As Tatel was not constructively dismissed, respondents likewise insist that he is not entitled to backwages, underpaid wages, damages, and attorney's fees.

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[45] *Id*. at 35.

[46] *Id*. at 36.

[47] *Id*. at 37.

[48] See Motion for Reconsideration dated December 3, 2012; *id*. at 172-183.

[49] *Id*. at 41-42.

[50] *Id*. at 245-255.

[51] *Id*. at 258-271.

In his comment[52] to respondents' motion for reconsideration, Tatel merely claimed that the Court's Decision was in accordance with law and jurisprudence and that respondent's motion for reconsideration was not verified and lacked a certificate against forum shopping. He offered a general denial of all other arguments made by respondents therein.

The Issue Before The Court

The issue for the Court's resolution is whether or not there is sufficient reason to reconsider the Court's February 25, 2015 Decision finding Tatel to have been constructively dismissed.

The Court's Ruling

The Court rules in the affirmative.

The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal, fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal.[53] The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive, and convincing.[54]

Specifically with respect to cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial

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[52] Dated June 15, 2015. *Id*. at 288-294.

[53] *Samar-Med Distribution v. NLRC,* G.R. No. 162385, July 15, 2013, 701 SCRA 148, 160, citing *Great Southern Maritime Services Corporation v. Acuña,* 492 Phil. 518, 530 (2005).

[54] *Cañedo v. Kampilan Security and Detective Agency, Inc.,* G.R. No. 179326, July 31, 2013, 702 SCRA 647, 658, citing *Ledesma, Jr. v. NLRC,* 562 Phil. 939, 951-952 (2007), further citing *Machica v. Roosevelt Services Center, Inc.,* 523 Phil. 199, 209-210 (2006).

to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six (6) months. The *onus* of proving that there is no post available to which the security guard can be assigned rests on the employer.[55]

In this case, Tatel asserts that he was illegally dismissed when, after he was put on "floating status" on October 24, 2009, respondents no longer gave him assignments or postings, and the period therefor had lasted for more than six (6) months. On the other hand, respondents argue that Tatel abandoned his work, and that his inconsistent statements before the labor tribunals regarding his work details rendered his claim of illegal dismissal suspect.

The Court has revisited the records, as well as the evidence in this case, and finds, after a more circumspect and conscientious examination thereof, that a partial reconsideration of its earlier Decision is proper.

Records show that Tatel's last assignment was with IPVG, which ended on October 23, 2009. While he insists that he was put on continuous "floating status" for a period of more than six (6) months since then, the evidence, however, indisputably shows that respondents summoned him back to work through the November 26, 2009 Memorandum, which he even *acknowledged*[56] to have received on December 11, 2009. The aforesaid Memorandum states in part:

MEMORANDUM

TO: MR. VICENTE C. TATEL

xxx xxx xxx

In this connection, you are hereby directed to report to this office within three (3) days upon receipt hereof for posting to Lotus Realty[,] Inc.

[55] *Exocet Security and Allied Services Corporation v. Serrano,* G.R. No. 198538, September 29, 2014, 737 SCRA 40, 56, citing *Nationwide Security and Allied Services, Inc. v. Valderama,* 659 Phil. 362, 370 (2011).

[56] See Reply to Respondents' Position Paper, *rollo,* p. 117.

located at Muelle de Banco National, Plaza Goite Street, Sta. Cruz, Manila. Otherwise, we will consider you as having abandon[ed] your work.

x x x x x x x x x[57]

In light of the foregoing, it cannot be denied that while Tatel had indeed been placed in "floating status" after his last assignment with IPVG, respondents had actually recalled him to work before the six-month period ended or on November 26, 2009 with specific instructions and for the purpose of assigning him to another client. Tatel acknowledged having received the same and claimed that while he complied with the directives stated thereon by reporting to the respondents' office, he was not given any assignment at all, but instead, asked to wait for another posting.[58] However, there is dearth of evidence to show his compliance with the return-to-work order, as he had alleged. Instead, records disclose that he ignored the November 26, 2009 Memorandum and opted to file the instant case for constructive dismissal after the lapse of six (6) months.

To reiterate, jurisprudence[59] has placed upon the employer the burden of proving that an employee was not dismissed or, if dismissed, that the dismissal was for a valid or authorized cause. In this case, respondents have adequately discharged this burden, proving that they **did not dismiss** Tatel. Accordingly, the burden of proof has shifted to the latter to establish otherwise, which he, however, failed to do. Apart from mere allegations, Tatel was unable to proffer any evidence to substantiate his claim of dismissal. On the contrary, records are bereft of any indication that he was prevented from returning to work or otherwise deprived of any work assignment by respondents.

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[57] *Id.* at 106.

[58] See *id.* at 117.

[59] See *Baron v. EPE Transport, Inc.,* G.R. No. 202645, August 5, 2015, citing *Samar-Med Distribution v. NLRC, supra* note 53; *Great Southern Maritime Services Corporation v. Acuña, supra* note 53; *Asia Pacific Chartering (Phils.), Inc. v. Farolan,* 441 Phil. 776 (2002); *National Bookstore, Inc. v. CA,* 428 Phil. 235 (2002); and *Sevillana v. I. T (International) Corp.,* 408 Phil. 570 (2001).

Hence, in the absence of any showing of an overt or positive act to establish that respondents had dismissed Tatel, the latter's claim of illegal dismissal cannot be sustained.[60] Conversely, respondents acted in good faith when they offered another posting to Tatel through the duly-received November 26, 2009 Memorandum. The Court notes that the Memorandum was sent during the pendency of the *underpayment case* that Tatel had, by then, lodged against respondents, thereby strengthening the stance of good faith in favor of respondents. In this regard, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of "floating status" as a case of constructive dismissal without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post,[61] as in this case. Clearly, Tatel's lack of an assignment for the six-month period cannot be attributed to respondents.

Consequently, since Tatel was not dismissed, he is not entitled to backwages and separation pay. Article 293[62] of the Labor Code of the Philippines states that "[i]n cases of regular employment, the employer shall not terminate the services of [an] employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges**

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[60] *MZR Industries v. Colambot,* G.R. No. 179001, August 28, 2013, 704 SCRA 150, 159, citing *Exodus International Construction Corporation v. Biscocho,* 659 Phil. 142, 155 (2011); *Security and Credit Investigation, Inc. v. NLRC,* 403 Phil. 264, 273 (2001).

[61] *Exocet Security and Allied Services Corporation v. Serrano, supra* note 55, at 59.

[62] As renumbered in view 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," approved on June 21, 2011 (Previously Article 279 of the Labor Code).

and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." As such, there being no dismissal in this case, petitioner is not entitled to either backwages or separation pay.

Be that as it may, the Court maintains its position that Tatel did not abandon his work.

To constitute abandonment of work, two (2) elements must be present: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[63] The burden to prove whether the employee abandoned his or her work rests on the employer.[64]

The mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. The operative act is still the employee's ultimate act of putting an end to his employment.[65]

In this case, respondents failed to discharge the burden required of them to prove that Tatel had abandoned his work.

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[63] *MZR Industries v. Colambot, supra* note 60, at 160, citing *Samarca v. Arc-Men Industries, Inc.,* 459 Phil. 506, 515 (2003), further citing *MSMG-UWP v. Ramos,* 383 Phil. 329, 371-372 (2000). See also *Seven Star Textile Company v. Dy,* 541 Phil. 468, 481 (2007); *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU,* 505 Phil. 418, 427 (2005); *Icawat v. NLRC,* 389 Phil. 441, 445 (2000).

[64] See *Protective Maximum Security Agency, Inc. v. Fuentes,* G.R. No. 169303, February 11, 2015.

[65] *Jordan v. Grandeur Security and Services, Inc.,* G.R. No. 206716, June 18, 2014, 727 SCRA 36, 58, citing *MZR Industries v. Colambot, supra* note 60, at 161.

In fact, the filing of a complaint for illegal dismissal is a proof of Tatel's desire to return to work, thus, effectively negating any suggestion of abandonment.[66] As the NLRC had opined, no rational explanation exists as to why an employee who had worked for his employer for more than ten (10) years would just abandon his work and forego whatever benefits he may be entitled to as a consequence thereof.[67]

For all the foregoing reasons, the Court rules that Tatel was neither constructively dismissed nor did he abandon his work. Therefore, petitioner's complaint is dismissed for lack of merit; Tatel is directed to return to work and respondents are likewise ordered to accept him.[68]

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED.** The Decision dated February 25, 2015 of the Court, which reversed the Decision dated November 14, 2012 and the Resolution dated April 22, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 119997, is hereby **SET ASIDE,** and a **NEW ONE** is entered dismissing petitioner Vicente C. Tatel's illegal dismissal complaint for lack of merit. He is hereby ordered to **RETURN TO WORK** within fifteen (15) days from receipt of this Resolution, and respondents JLFP Investigation Security Agency, Inc., Jose Luis F. Pamintuan, and/or Paolo C. Turno are likewise ordered to **ACCEPT** him. No costs.

SO ORDERED.

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

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[66] *Jordan v. Grandeur Security and Services, Inc., id.*

[67] See *rollo,* p. 87.

[68] See *Jordan v. Grandeur Security and Services, Inc., supra* note 65, at 58.

SECOND DIVISION

[G.R. No. 207633. December 9, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHNLIE LAGANGGA *y* DUMPA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM WHEN IT IS CREDIBLE, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** "Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*. In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with." "If the testimony of the victim is credible, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on the basis thereof." x x x In the present case, the RTC found "AAA's" account of her painful ordeal credible and sincere and gave it full probative weight. "AAA's" positive identification of appellant as the one who threatened her by poking a knife at her and her testimony that he boxed her on the abdomen rendering her unconscious and upon regaining consciousness noticed that her undergarment was removed, are clear and consistent.

2. **ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT THEREON IS GENERALLY ACCORDED GREAT WEIGHT ON APPEAL.—** Essentially, the argument of appellant as premised, boils down to the issue of credibility. Often, when the credibility of the witness is in issue, the trial court's assessment is accorded great weight unless it is shown that it overlooked, misunderstood or misappreciated a certain fact or circumstance of weight which, if properly considered, would alter the result of the case.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE ABSENCE OF MEDICAL CERTIFICATE AND EXTERNAL INJURIES DO NOT NEGATE RAPE.— The absence of a medical certificate is not fatal to the cause of the prosecution. Case law has it that in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party. "Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible. Moreover, the absence of external injuries does not negate rape. In fact, even the [presence] of spermatozoa is not an essential element of rape."

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AN INFORMATION THAT FAILS TO ALLEGE THAT THE OFFENSE WAS COMMITTED WHILE THE VICTIM WAS UNCONSCIOUS IS DEEMED CURED BY FAILURE OF THE ACCUSED TO QUESTION THE SUFFICIENCY OF THE INFORMATION AND TO OBJECT TO THE PRESENTATION OF EVIDENCE TENDING TO ESTABLISH THAT THE CRIME WAS COMMITTED THROUGH SUCH MEANS.— An information that fails to allege that the offense was committed while the victim was unconscious is deemed cured by the failure of the accused to question before the trial court the sufficiency of the information or by his failure to object to the presentation of evidence tending to establish that the crime was committed through such means. Apparently, appellant participated in the trial without raising any objection to the prosecution's evidence. Besides, as correctly observed by the CA, "AAA's" unconsciousness was the direct result of the force employed by appellant when he boxed the former on her stomach.

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; A LOVE AFFAIR DOES NOT JUSTIFY RAPE.— [A]ppellant admitted having sexual intercourse with "AAA" at the latter's house although he claimed that the sexual intercourse was consensual since they were lovers. The Court cannot subscribe to appellant's "sweetheart" theory and exculpate him from the charge. For one, such claim is self-serving since it was not substantiated by the evidence on record. And even if "AAA" and appellant were sweethearts, this fact does not necessarily negate rape. As has been consistently ruled, "a love affair does not justify

rape, for the beloved cannot be sexually violated against her will." "[L]ove is not a license for lust." More importantly, what destroyed the veracity of appellant's "sweetheart" defense are "AAA's" credible declaration that he is not her sweetheart and her vehement denial that he courted her.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the Decision[1] dated April 16, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00940 which affirmed the January 7, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 34, Cabadbaran City, in Criminal Case No. 2004-45 finding appellant Johnlie Lagangga *y* Dumpa (appellant) guilty beyond reasonable doubt of the crime of rape.

On March 9, 2004, an Information for rape under paragraph 1(a), Article 266-A of the Revised Penal Code was filed against appellant. The accusatory portion of said Information reads:

That on or about the 9th day of February, 2004, at dawn, at x x x Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one "AAA,"[3] against her will.

[1] CA *rollo*, pp. 80-95; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Henri Jean Paul B. Inting.

[2] Records, pp. 143-150; penned by Judge Godofredo B. Abul, Jr.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Eploitation And Discrimination, And for Other Purposes;

Contrary to law.[4]

During his arraignment on July 12, 2004, appellant entered a plea of not guilty. Soon after the pre-trial conference, trial on the merits ensued.

Version of the Prosecution

The prosecution's version of the incident as summarized by the Office of the Solicitor General (OSG) and adopted by the appellate court is as follows:

On February 9, 2004 at 2:00 A.M., private complainant (AAA), and her three (3) children were sleeping inside the room of their house x x x when she was awakened by the presence of a man wearing black clothes and a mask. Mistaking him for a dog, she simply shooed him away until she suddenly felt a knife being poked at her neck. The man took off his makeshift mask that was made from a t-shirt and because of the light from the kerosene lamp, private complainant recognized him as her neighbor and appellant Johnlie Lagangga, which prompted her to shout "*Oy! Johnlie ikaw man diay na!* (So, Johnlie it was you)." After covering her mouth, appellant boxed her on the stomach near the epigastric region or "*kuto-kuto*," rendering her unconscious.

When the private complainant regained consciousness at around 3:00 A.M., she saw appellant standing outside the room. He threatened her, saying: "*Basig ipablater ko nimo ugma, basig mosumbong ka, patyon ta na lang ka karon. Kung mosumbong ka, patyong tamong tanan*. (What if you will have me blottered tomorrow? What if you will report? I might as well kill you now, if you will report, then I will kill all of you.)"

Private complainant then noticed that her panty was gone, her private part smelled differently and that "there was the presence of

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Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.

[4] Records, p. 1.

mucous and probably a secretion of the male organ," concluding that she was used that night.

Private complainant's eldest son (BBB), who slept to the far right of his mother, was awakened along with his other siblings [by] the commotion and started crying. He saw appellant on top of his unconscious mother, undressing her and doing "a sort of push and pull movement or "kijo-kijo."

Despite appellant's threat, private complainant went to the house of their Purok president[,] Victoria "Baby" Mordin, to report the incident. The two then sought the help of Mordin's friend, Senior Police Officer 3 (SPO3) Paterno Magdula. SPO3 Magdula later accompanied them to the Santiago Police Station where the police interviewed and took the affidavits of both Mordin and the private complainant. Private complainant's son was later fetched by [the] police from their home [and] brought to the police station, where he gave his sworn statement on the incident.[5]

Version of the Defense

In his defense, appellant admitted having sexual intercourse with "AAA" but claimed it to be a consensual congress. As summarized by the Public Attorney's Office, his version of the incident is as follows:

In sum, his testimony would prove that on February 8, 2004 at around 6:00 o'clock in the evening, he arrived home from work in the mountain of Matinggi. Nobody was home, so he left and went to the house of the Purok President, Baby Mordin[,] at [a]round 7:00 o'clock in the evening, and found out that several people had a drinking session there. He took one shot of Kulafo, an alcoholic beverage, then returned home to take his supper. Thereafter, he went to the artesian well to wash his body and saw (AAA) fetching water. (AAA) asked him if he saw her husband in the mountain and after he answered in the negative, (AAA) invited him to go to her house later. At around 10:00 o'clock that evening, he went to the house of (AAA) and waited for the latter at the sala. (AAA) came out from her room about two minutes later; they talked briefly and then had sex. There was no light in the sala, only an illumination from outside, and (AAA) undressed herself. Their sexual intercourse took only a

[5] CA *rollo*, pp. 60-62.

few minutes, then he went home and slept. To his great surprise, he was arrested the following day.[6]

Ruling of the Regional Trial Court

On January 7, 2011, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of *reclusion perpetua*. He was also ordered to pay "AAA" the amount of ₱50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency.

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the RTC Decision by awarding, in addition to the civil indemnity, the amount of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, with interest at 6% *per annum* on all the amounts awarded from the date of finality of the judgment until fully paid.

Undeterred, appellant is now before this Court *via* the present appeal to gain a reversal of his conviction. He adopts the same argument he raised in his brief submitted before the CA, *viz.*:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASOABLE DOUBT.[7]

Our Ruling

The appeal is barren of merit.

"Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*. In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with."[8] "If the testimony of the victim is credible, convincing and consistent with human nature

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[6] *Id*. at 28-29.

[7] *Id*. at 25.

[8] *People v. Resurreccion*, 609 Phil. 726, 733 (2009).

and the normal course of things, the accused may be convicted solely on the basis thereof."[9]

Essentially, the argument of appellant as premised, boils down to the issue of credibility. Often, when the credibility of the witness is in issue, the trial court's assessment is accorded great weight unless it is shown that it overlooked, misunderstood or misappreciated a certain fact or circumstance of weight which, if properly considered, would alter the result of the case.[10]

In the present case, the RTC found "AAA's" account of her painful ordeal credible and sincere and gave it full probative weight. "AAA's" positive identification of appellant as the one who threatened her by poking a knife at her and her testimony that he boxed her on the abdomen rendering her unconscious and upon regaining consciousness noticed that her undergarment was removed, are clear and consistent. The CA was convinced of the veracity of "AAA's" testimony. Thus:

> Here, private complainant narrated a realistic account of her ordeal in a simple yet clear-cut manner. She expressed her anger and bitterness towards appellant who, by his dastardly act, ruined her and her family. Nowhere in the course of her testimony, not even in her cross examination, did it appear that she was impelled by improper motive.
>
> The testimony of a witness who has no motive or reason to falsify or perjure oneself should be given credence. A virtuous woman will not, as [a] rule, admit in public that she had been raped, as she thereby blemishes her honor and compromises her future, unless she is telling the truth. It is her natural instinct to protect her honor. The testimony of a married rape victim is given full weight and credence because no married woman with a husband and children would place herself on x x x public trial for rape where she would be subjected to suspicion, morbid curiosity, malicious imputations, and close scrutiny of her personal life, not to speak of a humiliation and scandal she and her family would suffer, if she was merely concocting her charge and would not be able to prove it in court.[11]

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[9] *Dizon v. People,* 616 Phil. 498, 508 (2009).

[10] *People v. Mateo*, 588 Phil. 543, 553-554 (2008).

[11] CA *rollo*, p. 93.

The absence of a medical certificate is not fatal to the cause of the prosecution. Case law has it that in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party. "Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible. Moreover, the absence of external injuries does not negate rape. In fact, even the [presence] of spermatozoa is not an essential element of rape."[12]

Appellant contends that he cannot be convicted of a crime entirely different from that alleged in the Information. According to him, from the tenor of the RTC's January 7, 2011 Decision, it appears that he was convicted of rape while "AAA" was under the state of unconsciousness. In the Information, however, he was accused of rape committed thru force and intimidation. He thus claims that his right to due process was violated.

We are not persuaded. An information that fails to allege that the offense was committed while the victim was unconscious is deemed cured by the failure of the accused to question before the trial court the sufficiency of the information or by his failure to object to the presentation of evidence tending to establish that the crime was committed through such means. Apparently, appellant participated in the trial without raising any objection to the prosecution's evidence. Besides, as correctly observed by the CA, "AAA's" unconsciousness was the direct result of the force employed by appellant when he boxed the former on her stomach.

More importantly, appellant admitted having sexual intercourse with "AAA" at the latter's house although he claimed that the sexual intercourse was consensual since they were lovers. The Court cannot subscribe to appellant's "sweetheart" theory and exculpate him from the charge. For one, such claim is self-serving since it was not substantiated by the evidence on record. And even if "AAA" and appellant were sweethearts, this fact does not necessarily negate rape. As has been consistently ruled, "a love affair does not justify rape, for the beloved cannot

[12] *People v. Pelagio*, 594 Phil. 464, 475 (2008).

be sexually violated against her will."[13] "[L]ove is not a license for lust."[14] More importantly, what destroyed the veracity of appellant's "sweetheart" defense are "AAA's" credible declaration that he is not her sweetheart and her vehement denial that he courted her.[15]

In fine, the Court finds no cogent reason to overturn the RTC's finding, which was affirmed by the CA, that appellant employed force and intimidation on "AAA," who consequently lost consciousness, to perpetrate the offense charged.

The Penalty

Rape as defined and penalized under paragraph 1[16] Article 266-A in relation to Article 266-B[17] of the Revised Penal Code, as amended, is in punishable by *reclusion perpetua*. Consequently, the penalty of *reclusion perpetua* imposed by the RTC and affirmed by the CA is proper.

The Civil Liability

With respect to the civil liability of appellant, the Court finds that the CA correctly affirmed the RTC's award of ₱50,000.00 as civil indemnity and the CA's additional awards of ₱50,000.00 as moral damages even without need of further proof and ₱30,000.00

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[13] *People v. Nogpo, Jr.*, 603 Phil. 722, 743 (2009).

[14] *Id*.

[15] TSN, February 7, 2005, p. 12.

[16] ART. 266-A. Rape, When and How Committed.– Rape is committed –
1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a. Through force, threat and intimidation;
   b. When the offended party is deprived of reason or is otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority;
   d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present;

[17] ART. 266-B. Penalties. Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

as exemplary damages, with interest at 6% *per annum* on all *annum* on all the damages awarded from the date of finality of the judgment until fully paid as proper.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals dated April 16, 2013 in CA-G.R. CR-HC No. 00940 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perez,[*] *Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 209039. December 9, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MIRAFLOR UGANIEL LERIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING; ELEMENTS; DULY ESTABLISHED IN CASE AT BAR.— The prosecution has established the elements of kidnapping under Article 267, paragraph 4 of the Revised Penal Code, to wit: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer. The prosecution has adequately and satisfactorily proven that accused-appellant is a private individual; that accused-appellant took one-month old baby Justin Clyde from his residence, without the knowledge or consent of, and against the will of his mother; and that the victim was a minor, one-month old at the time of the incident, the fact of which accused-appellant herself admitted.

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[*] Per Special Order No. 2301 dated December 1, 2015.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY GIVEN GREAT WEIGHT ON APPEAL.— [U]nless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight that would have affected the result of the case, the Court will not disturb factual findings of the lower court. Having had the opportunity of observing the demeanor and behavior of witnesses while testifying, the trial court more than this Court is in a better position to gauge their credibility and properly appreciate the relative weight of the conflicting evidence for both parties. When the issue is one of credibility, the trial court's findings are given great weight on appeal.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-HC. No. 01392 dated 20 June 2013 which affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Cebu City, Branch 24, in Criminal Case No. CBU-74501, finding accused-appellant Miraflor Uganiel Lerio guilty beyond reasonable doubt of the crime of kidnapping of a minor.

Accused-appellant, together with co-accused Relly Ronquillo Arellano (Arellano), were charged with Kidnapping of a Minor in an Information, the accusatory portion of which reads:

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[1] *Rollo,* pp. 3-12; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

[2] Records, pp. 94-104; Presided by Presiding Judge Olegario R. Sarmiento, Jr.

That on or about the 10th day of September, 2005, at about 10:00 a.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with each other, with deliberate intent, being then private individuals, did then and there kidnap, carry away and deprive one JUSTIN CLYDE D. ANNIBAN, a baby boy, one (1) month) and eighteen (18) days old, of his liberty, without authority of law and against his will and consent.[3]

Accused-appellant was arrested on 10 September 2005 and detained on 12 September 2005.

On 19 September 2005, private complainant Aileen Anniban (Anniban) filed an Affidavit of Desistance[4] in favor of Arellano declaring her belief that the latter was innocent of the crime charged. The police officers, however, insisted on impleading Arellano in the Information. Upon reinvestigation, as ordered by the trial court, Public Prosecutor Atty. Ma. Luisa Ratilla-Buenaventura recommended the dismissal of the case against Arellano. Accordingly, the trial court dropped the name of Arellano from the Information.[5]

Upon arraignment, accused-appellant entered a plea of "not guilty." Trial ensued.

The prosecution presented as witnesses Anniban, Senior Police Officer 4 Virgilio Paragas (SPO4 Paragas) and Police Officer 3 Florito Homecilla Banilad (PO3 Banilad) whose testimonies sought to establish the following facts:

Anniban is a housewife, and a resident of Sitio San Miguel, Purok I Apas, Cebu City. She had come to know of accused-appellant a week before the incident as the latter had been staying at her neighbour's house.

On 10 September 2005, around 5:30 in the morning, Anniban was in her kitchen preparing milk for her infant child, Justin

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[3] *Id.* at 1.

[4] *Id.* at 11.

[5] *Rollo*, p. 4.

Clyde, when accused-appellant entered the house and lay down on the bed beside the child and began chatting with her.

Accused-appellant then told her that she would take the infant outside to bask him under the morning sun. Anniban refused this as the child had not yet been bathed. A few minutes later, Anniban realized that accused-appellant and her child were no longer in the house. A tenant of Anniban's informed her that she had seen accused-appellant quietly slip out of the house. When Anniban left the house to search for accused-appellant, she met her neighbor Yvonne on the way who told her that she had seen accused-appellant carrying her son and that accused-appellant was *en route* to Toledo City.[6]

Anniban sought the help of her neighbor Virginia Baldoza (Baldoza) who had known accused-appellant. Baldoza and her daughter thereafter accompanied Anniban to the South Bus Terminal. Thereat, a dispatcher informed them that accused-appellant had been fetched by a tattoed man on board a taxicab and that both headed for the pier to get on the M/V Asia Philippines.[7]

Around three o'clock in the afternoon, Anniban reported the incident to the Maritime Police and requested assistance. SPO4 Paragas, PO3 Banilad and PO1 Ricky Yeban accompanied Anniban to the vessel.[8]

Inside the ship, Anniban saw Arellano rocking her child in a cradle. Certain that it was Justin Clyde, she took the child and told Arellano that the child is hers. Both grappled for the baby.

Shortly, accused-appellant, who had been standing a few meters away, joined Arellano and both were arrested.[9]

Accused-appellant testified in her defense and interposed the defense of denial.[10]

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[6] TSN, 26 September 2006, pp. 5-9; Testimony of Anniban.

[7] *Id*. at 10.

[8] *Id.* at 9-11; TSN, 19 June 2007, pp. 3-7; Testimony of SPO4 Paragas.

[9] TSN, 19 June 2007, pp. 2-9; Testimony of SPO4 Paragas;TSN, 31 July 2007, pp. 2-6; Testimony of PO3 Banilad.

[10] TSN, 22 April 2009, pp. 2-16.

Accused-appellant claimed that she and Anniban used to be neighbors. She did confirm that on 10 September 2005, she had gone to Anniban's house and chatted with her. While Anniban was busy doing her chores, she told her that she would take the child outside but was uncertain whether she had been heard by Anniban. Accused-appellant did take the child outdoors and proceeded to the pier as she had gotten a call from her boyfriend requesting her to meet with him on the vessel M/V Asia Philippines. Accused-appellant brought the child with her as her boyfriend allegedly wanted to see the child.

On the vessel, accused-appellant averred that she had received a call from Anniban asking for her child's whereabouts. Accused-appellant allegedly replied that they were just meeting with her boyfriend and that she would return the child that same afternoon. In response, Anniban purportedly threatened to file a case for kidnapping against accused-appellant if she did not return her son. Accused-appellant and her boyfriend were indeed arrested and charged with kidnapping of a minor by the maritime police officers.

On cross-examination, accused-appellant revealed that she had conceived a child around the same time as Anniban but that her child died during labor. She did not disclose this to her boyfriend and the latter's mother fearing their condemnation.[11]

On 09 August 2011,[12] accused-appellant was found guilty beyond reasonable doubt of kidnapping of a minor. The RTC ruled that accused-appellant's act of taking of the one-month old infant, without the knowledge or consent of his mother, constituted the crime. It rejected accused-appellant's denial and gave credence to the testimonies for the prosecution. The dispositive portion of the RTC Decision reads:

WHEREFORE, finding accused MIRAFLOR UGANIEL LERIO GUILTY of the crime charged beyond reasonable doubt, hereby sentences her to suffer imprisonment of Reclusion Perpetua, as provided for in Article 267 of the Revised Penal Code as the victim

[11] *Id*. at 13.

[12] Records, pp. 94-104.

is a minor, one-month old. She shall suffer the accessory penalty inherent in law.

She is adjudged liable to pay the following measures of damages:

a) the sum of Fifty Thousand Pesos (₱50,000.00) by reason of the crime;

b) the sum of Fifty Thousand Pesos (₱50,000.00) as moral damages;

c) the sum of Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.

No pronouncement as to costs.[13]

Accused-appellant seasonably filed a Notice of Appeal[14] before the CA.

On 20 June 2013, the CA affirmed the judgment of the RTC but modified the amount of exemplary damages, raising it to Thirty Thousand Pesos (₱30,000.00) in line with the case of *People v. Valerio*.[15]

The CA rejected accused-appellant's contention that there had been no actual confinement or restraint imposed by her on the one-month old baby and that there had been no intention on her part to deprive him of liberty. The CA considered the age of the baby and ruled that since he had been placed in the physical custody and complete control of accused-appellant, whom he could not fight nor escape from, such constituted deprivation of liberty. The CA also noted accused-appellant's admission that she took the child away from her mother even when uncertain whether the latter had heard her request to take him; and that accused-appellant curiously had quietly left the house with the child and did not inform Anniban of her plans to head for the pier and show the baby to her boyfriend.[16]

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[13] *Id*. at 104.

[14] *Id*. at 105.

[15] *Rollo*, p. 12; CA Decision citing G.R. No. 186123, 27 February 2012, 667 SCRA 69.

[16] *Id*. at 8-9.

Accused-appellant appealed her conviction before this Court. In a Resolution[17] dated 20 November 2013, accused-appellant and the Office of the Solicitor-General (OSG) were notified that they may file their respective briefs if they so desired. Both parties manifested that they were adopting their briefs filed before the appellate court as their respective supplemental briefs.[18]

The Court finds no reason to reverse the factual findings of the RTC, as affirmed by the CA. The prosecution has established the elements of kidnapping under Article 267, paragraph 4 of the Revised Penal Code, to wit: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer.[19]

The prosecution has adequately and satisfactorily proven that accused-appellant is a private individual; that accused-appellant took one-month old baby Justin Clyde from his residence, without the knowledge or consent of, and against the will of his mother; and that the victim was a minor, one-month old at the time of the incident, the fact of which accused-appellant herself admitted.[20]

To reiterate the time-honored maxim, unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight that would have affected the result of the case, the Court will not disturb factual findings of the lower court. Having had the opportunity of observing the demeanor and behavior of witnesses while testifying, the trial court more than this Court is in a better position to gauge their credibility and properly appreciate the relative weight of the conflicting evidence for both parties. When the issue is

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[17] *Id*. at 18.

[18] *Id*. at 21-24 and 27-28.

[19] *People v. Bringas, et al.*, 633 Phil. 406, 515 (2010).

[20] TSN, 22 April 2009, p. 4.

one of credibility, the trial court's findings are given great weight on appeal.[21]

In addition, accused-appellant's defense of denial, like alibi, is inherently weak and if uncorroborated, is impotent. It constitutes self-serving negative evidence which cannot be given greater evidentiary weight than the declaration of credible witnesses who testified on affirmative matters.[22]

The prescribed penalty for kidnapping a minor under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, is *reclusion perpetua* to death, to wit:

> Art. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.
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> x x x x x x x x x
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> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

Since neither aggravating nor mitigating circumstances attended the commission of the felony, the RTC properly imposed the penalty of *reclusion perpetua*, together with the accessory penalty provided by law. The Court of Appeals also correctly modified the amount of the award of exemplary damages in conformity with prevailing jurisprudence.[23] Finally, all damages awarded shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.[24]

WHEREFORE, the Decision dated 20 June 2013 of the Court of Appeals in CA-G.R. CEB CR-HC. No. 01392 affirming the judgment of conviction of accused-appellant Miraflor Uganiel

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[21] *People v. Bondoc,* G.R. No. 98400, 23 May 1994, 232 SCRA 478, 484-485.

[22] *People v. Villacorta*, 672 Phil. 712, 721 (2011).

[23] *People v. Valerio,* G.R. No. 186123, 27 February 2012, 667 SCRA 69.

[24] *People v. Colantava*, G.R. No. 190348, 9 February 2015.

Lerio rendered by the Regional Trial Court of Cebu City, Branch 24, for Kidnapping of a Minor and sentencing her to suffer the penalty of *Reclusion Perpetua* and pay damages as follows: a) ₱50,000.00 as civil indemnity *ex delicto*; b) ₱50,000.00 as moral damages; and c) ₱30,000.00 as exemplary damages is hereby **AFFIRMED WITH MODIFICATION.** All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 209040. December 9, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO PATEÑO *y* DAYAPDAPAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT DIMINISHED BY CLAIM OF SEQUENT RAPE IDENTIFICALLY DONE AND BY FAILURE TO IMMEDIATELY REPORT THE INCIDENT.— In *People v. Solomon*, we held that the victim's uniform testimony regarding the manner by which she was raped does not diminish her credibility. x x x AAA did not immediately report the incident to her teacher and instead, she suffered for four more similar incidents before she broke her silence. There is a plausible explanation for the conduct of the victim. x x x AAA was only able to report the incident when she was away from the custody of accused-appellant and when she felt safe. AAA's credibility was upheld

by the trial court, which is in a position to observe the candor, behavior and demeanor of the witness. Findings of the lower courts with respect to credibility of the rape victim are conclusive.

2. CRIMINAL LAW; RAPE QUALIFIED BY MINORITY AND RELATIONSHIP; PENALTY.— Considering that accused-appellant committed rape qualified by the twin circumstances of minority and relationship, the proper penalty to be imposed is death. Since the imposition of the death peanalty has been prohibited by Republic Act No. 9346, the lower courts properly imposed the peanalty of *reclusion perpetua* without eligibility for parole for each count of rape. As to the award of damages, AAA is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. Finally, all damages awarded shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

The subject of this review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00788 dated 23 May 2013 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Bais City, Branch 45, in Criminal Case Nos. F-03-12-A, F-03-13-A, F-03-14-A, F-03-15-A, and F-03-16-A finding accused-appellant Rodolfo Pateño *y* Dayapdapan guilty beyond reasonable doubt of five (5) counts of rape.

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[1] *Rollo*, pp. 3-23; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

[2] Records (Criminal Case No. F-03-12-A), pp. 158-166; Presided by Judge Ismael O. Baldado.

Except for the dates, the five (5) Informations identically charge accused-appellant of rape committed as follow:

> That on or about March 25, 2002 at about 10:00 o'clock in the evening at x x x, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the father of 14-year old [AAA],[3] did then and there willfully, unlawfully and feloniously by force, threat or intimidation, insert his penis into the vagina of his said daughter and had carnal knowledge of her against her will and consent.[4]

On arraignment, accused-appellant pleaded not guilty. During pre-trial, both parties made the following factual stipulations:

1. That the accused admits his identity in the five (5) cases that whenever his name is mentioned in the proceedings he is the same accused in this case;
2. That accused admits that he is the father of the victim [AAA];
3. That accused admits that he is living at [x x x],[5] Negros Oriental; and
4. That private complainant admits that she was a contestant in a beauty pageant involving money contribution wherein the winner is determined with the amount of money raised on occasion of the *barangay* fiesta of [x x x] on 5 April 2002.[6]

AAA related that she was only four years old when her parents left her to the care of her aunt, BBB. AAA started living with accused-appellant only in 2000 in a two-bedroom house. On 25 March 2002 at around 10:00 p.m., AAA, then

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[3] The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004).

[4] Records, p. 1.

[5] The address of appellant is withheld to protect the victim who lived with him.

[6] Records (Criminal Case No. F-03-12-A), p. 39.

14 years old, was awakened by accused-appellant who removed her short pants and underwear. Accused-appellant likewise took off his clothes. He threatened AAA with a scythe and ordered her to stay quiet. He then mounted her and made pumping motions. After satisfying his lust, accused-appellant left without saying a word. He proceeded to perform this bestial act on AAA for the four (4) succeeding nights.[7]

When AAA could no longer bear it, she left the house and stayed in the house of her teacher from 30 March to 1 April 2002 where she intimated to the latter her harrowing experience in the hands of accused-appellant.[8]

On 5 April 2002, AAA underwent a medical examination, the findings and results of which are as follow:

- Contusion upper border iliac region, right
  - Pelvic exam:
  - With old hymenal tear at 3 & 9 o'clock positions
  - Negative for discharges
  - Admits 2 fingers with ease[9]

A pastor of the United Church of Christ of the Philippines (UCCP) testified on the contents of the Membership Record Book which show that AAA was born on 10 September 1987 and was baptized on 5 June 1988. Said document also listed accused-appellant as AAA's father.

Accused-appellant confirmed that AAA started staying with him in March 2002 but added that there were five of them living in the house of his nephew, Rene Pateño (Rene). He denied raping AAA and claimed that AAA is taking revenge because during a beauty contest in April of that year, he pinched AAA in front of her fellow contestants and *barangay* councilors.[10] Accused-appellant's nephew, Rene testified that

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[7] TSN, 24 July 2003, pp. 4-15.

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

[9] Records (Criminal Case No. F-03-12-A), p. 9.

[10] TSN, 12 May 2005, pp. 3-7.

accused-appellant lived with him but AAA was living with his sister.[11] Rene's sister Arly corroborated Rene's statement that AAA was living with her on the dates of the alleged rape incidents.[12] Both witnesses speculated that AAA wrongfully accused her father of rape because she harbored a grudge towards accused-appellant who would always scold her.[13]

On 27 April 2007, accused-appellant was found guilty beyond reasonable doubt of five (5) counts of rape. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, this [c]ourt finds accused **RODOLFO PATEÑO *y* DAYAPDAPAN, guilty beyond reasonable doubt for the crime of rape for five (5) counts** as provided under the provisions of Article 266-A of the Revised Penal Code, and pursuant to the provisions of par. (1) of Article 266-B, he may be meted the extreme penalty of death. But, with the passage of Republic Act No. 8353, he is thereby meted the penalty of **FIVE (5) RECLUSION PERPETUAS**, and with all the accessory penalties.
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> He is thereby ordered to pay the victim, [AAA], the amount of FIFTY THOUSAND (₱50,000.00) PESOS for actual damages and another FIFTY THOUSAND (₱50,000.00) PESOS for moral damages, and to pay costs.[14]

On 23 May 2013, the CA rendered the assailed judgment affirming with modification the trial court's decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Appeal is **DENIED**. The *Joint Decision* dated April 27, 2007 of the Regional Trial Court RTC), Branch 45, Bais City in Criminal Case Nos. F-03-12-A, F-03-13-A, F-03-14-A, F-03-15-A, [and] F-03-16-A convicting Rodolfo Pateño y Dayapdapan of five (5) counts of rape and meting him the penalty of imprisonment of *reclusion perpetua* for each count, is hereby **AFFIRMED** with the **MODIFICATIONS** as to damages.

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[11] TSN, 23 August 2005, p. 4.

[12] TSN, 17 July 2006, p. 5.

[13] TSN, 23 August 2005, pp. 7-8, *id.* at 7-8.

[14] Records (Criminal Case No. F-03-12-A), p. 166.

Accused-appellant Rodolfo Pateño y Dayapdapan is ordered to pay the victim AAA Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy Five Thousand Pesos (₱75,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, for each count of rape, all with interest at the rate of 6% per annum from the date of finality of this judgment. No costs.[15]

Accused-appellant filed the instant appeal. In a Resolution[16] dated 18 November 2013, accused-appellant and the Office of the Solicitor General (OSG) were required to file their respective supplemental briefs if they so desired. Both parties manifested that they were adopting their respective briefs filed before the appellate court.[17]

In his Brief,[18] accused-appellant argues that AAA's testimony regarding the time and manner of the purported five (5) rape incidents is incredulous. Accused-appellant insists that AAA did not feel any fatherly love towards him and she had the motive to falsely accuse him of rape. Accused-appellant claimed that AAA had been reprimanded numerous times by him because of her unacceptable behavior. Finally, accused-appellant contends that the prosecution failed to prove AAA's age at the time of the commission of the alleged crime.

The appeal is without merit.

Accused-appellant insists that AAA's claim of sequent rape identically done is highly improbable and contrary to human experience.

In *People v. Solomon*,[19] we held that the victim's uniform testimony regarding the manner by which she was raped does not diminish her credibility. We explained, thus:

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

[16] *Id*. at 29.

[17] *Id*. at 31-33 and 37-39.

[18] CA *rollo*, pp. 20-33.

[19] 434 Phil. 1 (2002).

> Men are creatures of habit and are bound to adopt a course of action that has proven to be successful. As appellant was able to fulfill his lustful designs upon complainant the first time, it comes as no surprise that he would repeat the horrific acts when the circumstances obtaining in the first rape again presented themselves.[20]

As in the aforestated case, AAA did not immediately report the incident to her teacher and instead, she suffered for four more similar incidents before she broke her silence.

There is a plausible explanation for the conduct of the victim. The Court explained in *Solomon*, *viz.*:

> Complainant's youth partly accounts for her failure to escape appellant's lust. A young girl like complainant cannot be expected to have the intelligence to defy what she may have perceived as the substitute parental authority that appellant wielded over her. That complainant had to bear more sexual assaults from appellant before she mustered enough courage to escape his bestiality does not imply that she willingly submitted to his desires. Neither was she expected to follow the ordinary course that other women in the same situation would have taken. There is no standard form of behavior when one is confronted by a shocking incident. Verily, under emotional stress, the human mind is not expected to follow a predictable path.[21]

AAA was only able to report the incident when she was away from the custody of accused-appellant and when she felt safe.

AAA's credibility was upheld by the trial court, which is in a position to observe the candor, behavior and demeanor of the witness. Findings of the lower courts with respect to credibility of the rape victim are conclusive.

We also cannot give credence to accused-appellant's claim that AAA was taking revenge when she filed the rape charges against accused-appellant for allegedly castigating her. No

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[20] *Id.* at 21.

[21] *Id.*

woman in her right mind, especially a young girl, would fabricate charges of this nature and severity.[22]

The RTC and the CA correctly appreciated the twin qualifying circumstances of minority and relationship. Accused-appellant admitted during the pre-trial conference that AAA was his daughter. Thus, relationship between accused-appellant and AAA is established. Anent the element of minority, the prosecution presented a certification[23] from the UCCP Office in Ayungon, Negros Occidental stating that AAA was baptized according to the rites and ceremonies of the UCCP. The certification shows that AAA was born on 10 September 1987 to accused-appellant and a certain Nely Fabel. A page of the UCCP Membership Book was submitted bearing the same information. It was held that a birth certificate, baptismal certificate, school records or documents of similar nature can be presented to prove the age of a victim.[24] In this case, the Membership Book, which is considered an entry in official records under Section 44,[25] Rule 130 of the Rules of Court, is admissible as prima facie of their contents and corroborative of AAA's testimony as to her age. Moreover, entries in public or official books or records may be proved by the production of the books or records themselves or by a copy certified by the legal keeper thereof.[26]

Considering that accused-appellant committed rape qualified by the twin circumstances of minority and relationship, the proper penalty to be imposed is death. Since the imposition

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[22] *People v. Cabral*, 623 Phil. 809, 815 (2009).

[23] Records, p. 88.

[24] *People v. Jacob*, 413 Phil. 542, 548 (2001).

[25] Section 44. *Entries in official records*. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[26] *People v. Jalosjos*, 421 Phil. 43, 86 (2001).

of the death penalty has been prohibited by Republic Act No. 9346, the lower courts properly imposed the penalty of *reclusion perpetua* without eligibility for parole for each count of rape.

As to the award of damages, we deem it proper to further modify the CA's award. Pursuant to our ruling in *People v. Gambao*,[27] AAA is thus entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. Finally, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.[28]

WHEREFORE, accused-appellant Rodolfo Pateño *y* Dayapdapan is found **GUILTY** for each count of the crime of rape, qualified by minority and relationship, charged under Criminal Case Nos. F-03-12-A, F-03-13-A, F-03-14-A, F-03-15-A, and F-03-16-A and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death. He is also **ORDERED** to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each count of rape, plus legal interest at the rate of 6% *per annum* from the finality of this Resolution until the amounts due are fully paid.

SO ORDERED.

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

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[27] G.R. No. 172707, 1 October 2013, 706 SCRA 508, 533.

[28] *People v. Colantava*, G.R. No. 190348, 9 February 2015.

THIRD DIVISION

[G.R. No. 209324. December 9, 2015]

REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF CUSTOMS, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE REGIONAL TRIAL COURTS; REMEDIES FROM THE DECISIONS OF THE RTC IN THE EXERCISE OF ITS ORIGINAL JURISDICTION; ORDINARY APPEAL TO THE COURT OF APPEALS AND APPEAL BY *CERTIORARI* TO THE SUPREME COURT.—** Section 2, Rule 41 of the 1997 Rules of Civil Procedure, as amended, provides for two remedies from the final orders or judgments of the RTC in the exercise of its original jurisdiction, *viz.*: Section 2. ***Modes of appeal***. – (a) ***Ordinary appeal***. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x (c) ***Appeal by certiorari***. – In all cases **where only questions of law are raised or involved**, the appeal shall be **to the Supreme Court by petition for review on certiorari in accordance with Rule 45**. Thus, when an appeal raises only pure questions of law, it is this Court that has the sole jurisdiction to entertain the same. On the other hand, appeals involving both questions of law and fact fall within the exclusive appellate jurisdiction of the CA.

2. **ID.; ID.; APPEALS; QUESTION OF LAW; DISTINGUISHED FROM QUESTION OF FACT.—** A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on

what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

3. ID.; ID.; ID.; ID.; INCLUDES THE ISSUE OF WHETHER THE RTC ERRED IN RENDERING SUMMARY JUDGMENT.— We have held that the question of whether the RTC erred in rendering summary judgment is one of law, thus: Any review by the appellate court of the propriety of the summary judgment rendered by the trial court based on these pleadings would not involve an evaluation of the probative value of any evidence, but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents.

4. ID.; ID.; ID.; WRONG MODE OF APPEAL; LAPSE RELAXED CONSIDERING THE REPUBLIC'S STAKE IN THE OUTCOME OF THE PROCEEDINGS.— Petitioner raised as sole issue in its brief filed with the CA the RTC's erroneous grant of summary judgment in favor of PSPC based on its finding that there exists no genuine factual issue. Obviously, it availed of the wrong mode of appeal when it filed a notice of appeal in the RTC under Section 2(a), Rule 41, instead of a petition for review on certiorari in this Court under Rule 45. However, despite such lapse, a relaxation of the rule on appeal is justified under the circumstances. The CA found no reversible error in the grant of summary judgment in favor of PSPC. Accordingly, it affirmed the assailed orders of the RTC. Considering the Republic's stake in the outcome of the proceedings in Civil Case No. 02-103191, among the several collection suits it has instituted in the drive to recover huge revenue losses from spurious tax credit certificates that proliferated in the 1990s, we cannot accede to PSPC's contention that petitioner's erroneous appeal has rendered the Orders dated April 28, 2010 and July 2, 2010 of the RTC final and executory.

5. ID.; ID.; SUMMARY JUDGMENT; PROPER WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT; WHEN

THE FACTS AS PLEADED BY THE PARTIES ARE DISPUTED, PROCEEDINGS FOR SUMMARY JUDGMENT CANNOT TAKE THE PLACE OF TRIAL.— ***Summary Judgment Not Proper*** Under Rule 35 of the 1997 Rules of Civil Procedure, as amended, except as to the amount of damages, when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed. x x x When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact. x x x Genuine issue means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious or contrived. x x x When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.

6. **TAXATION; TARIFF AND CUSTOMS CODE; LIABILITY OF IMPORTER FOR DUTIES; CONSTITUTES A PERSONAL DEBT DUE FROM THE IMPORTER TO THE GOVERNMENT WHICH CAN BE DISCHARGED ONLY BY PAYMENT IN FULL; COLLECTION CASE PROPER AS TAX CREDIT CERTIFICATES (TCC) USED BY PSPC FOR PAYMENT OF ITS TAX LIABILITIES WERE CANCELLED.—** Bureau of Customs' (BOC's) collection suit is not based on any new or revised assessment because the original assessments which had long become final and uncontestable, were already settled by PSPC with the use of the subject TCCs. With the cancellation of the TCCs, the tax liabilities of PSPC under the original assessments were considered unpaid, hence BOC's demand letters and the action for collection in the RTC. x x x The applicable provision is Section 1204 of the Tariff and Customs Code. x x x As we held in *Pilipinas Shell Petroleum Corporation v. Republic*: Under this provision, import duties constitute a

personal debt of the importer that must be paid in full. The importer's liability therefore constitutes a lien on the article which the government may choose to enforce while the imported articles are either in its custody or under its control. When respondent released petitioner's goods, its (respondent's) lien over the imported goods was extinguished. Consequently, respondent could only enforce the payment of petitioner's import duties in full by filing a case for collection against petitioner.

7. REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS*; NOT APPLICABLE CONSIDERING THE ERROR IN DECISION.— The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Accordingly, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. [Here,] the CA erred in affirming the RTC orders granting summary judgment in favor of PSPC considering that there exists a genuine issue of fact and that *stare decisis* finds no application in this case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Marcelo & Tenefrancia for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review under Rule 45 are the Decision[1] dated February 13, 2013 and Resolution[2] dated June

[1] *Rollo,* pp. 45-62. Penned by Associate Justice Socorro B. Inting with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez concurring.
[2] *Id*. at 64-65.

3, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 95436 which affirmed the Orders[3] dated April 28, 2010 and July 2, 2010 of the Regional Trial Court (RTC) of Manila, Branch 49 in Civil Case No. 02-103191.

Factual Antecedents

Pilipinas Shell Petroleum Corporation (PSPC), a domestic corporation registered with the Board of Investments (BOI), is engaged in the importation, refining and sale of petroleum products in the country. For its importations, PSPC was assessed and required to pay customs duties and internal revenue taxes.

Under Deed of Assignment[4] dated May 7, 1997, Filipino Way Industries (FWI) assigned the following Tax Credit Certificates[5] (TCCs) to PSPC:

TCC # 006889	₱ 2,542,918.00
TCC # 006977	2,573,422.00
TCC # 006978	2,559,493.00
TCC # 006979	2,413,079.00
TOTAL	**₱ 10,088,912.00**[6]

On the belief that the TCCs were actually good and valid, the Bureau of Customs (BOC) accepted and allowed PSPC to use the above TCCs to pay the customs duties and taxes due on its oil importations.

The One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center[7] ("Center") undertakes the processing of TCCs and approval of their transfers. It is composed of a representative from the Department of Finance (DOF) as its chairperson; and the members thereof are representatives of the BOI, BOC and Bureau of Internal Revenue (BIR).

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[3] *Id*. at 66-73. Penned by Judge William Simon P. Peralta.

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

[5] *Id*. at 74-77.

[6] *Id*. at 78.

[7] Created pursuant to Administrative Order No. 226 issued on February 7, 1992.

On November 3, 1999 the Center, through then Finance Secretary Edgardo B. Espiritu, informed BIR Commissioner Beethoven L. Rualo that pursuant to EXCOM Resolution No. 03-05-99, it has cancelled various Tax Debit Memos (TDMs) issued to PSPC and Petron Corporation against their TCCs which were found to have been fraudulently issued and transferred. These include the subject TCCs sold by FWI to PSPC. The Center thus advised that it will be demanding from the said oil companies payment corresponding to the amount of the TCCs as evidenced by the TDMs, and accordingly directed the BIR to collect the amount utilized on the TCCs, including the related penalties, surcharges and interests.[8] A similar letter was sent to Customs Commissioner Nelson Tan regarding the cancellation of TDMs issued to PSPC based on the Center's finding that the TCCs utilized by PSPC have been fraudulently issued and transferred.[9]

On April 3, 2002, the Republic of the Philippines represented by the BOC filed the present collection suit in the RTC (Civil Case No. 02-103191) for the payment of ₱10,088,912.00 still owed by PSPC after the invalidation of the subject TCCs.

Meanwhile, PSPC filed with the Court of Tax Appeals (CTA Case No. 6484) a petition for review questioning the factual and legal bases of BOC's collection efforts.

Subsequently, PSPC moved to dismiss Civil Case No. 02-103191 on the ground that the RTC had no jurisdiction over the subject matter and that the complaint for collection was prematurely filed in view of its pending petition for review in the CTA. The RTC denied the motion to dismiss and PSPC eventually filed its answer questioning the RTC's jurisdiction. When the RTC issued a notice of pre-trial, PSPC moved for reconsideration of the order denying its motion to dismiss. The RTC denied the motion for reconsideration, prompting PSPC to elevate the matter to the CA *via* a petition for certiorari (CA-G.R. SP No. 71756). On October 23, 2003, the CA rendered

[8] *Id*. at 135.

[9] *Id*. at 133.

decision denying PSPC's petition. With the denial of its motion for reconsideration, PSPC sought recourse from this Court in a petition for review on certiorari (G.R. No. 161953). In a Decision[10] dated March 6, 2008, this Court denied PSPC's petition, *viz.*:

> Inasmuch as the present case did not involve a decision of the Commissioner of Customs in any of the instances enumerated in Section 7(2) of RA 1125, **the CTA had no jurisdiction over the subject matter. It was the RTC that had jurisdiction under Section 19(6) of the Judiciary Reorganization Act of 1980, as amended**:
>
> x x x x x x x x x
>
> In view of the foregoing, the RTC should forthwith proceed with Civil Case No. 02-103191 and determine the extent of petitioner's liability.
>
> We are not unmindful of petitioner's pending petition for review in the CTA where it is questioning the validity of the cancellation of the TCCs. However, respondent cannot and should not await the resolution of that case before it collects petitioner's outstanding customs duties and taxes for such delay will unduly restrain the performance of its functions. Moreover, if the ultimate outcome of the CTA case turns out to be favorable to petitioner, the law affords it the adequate remedy of seeking a refund.
>
> **WHEREFORE**, this petition is hereby *DENIED*. The Regional Trial Court of Manila, Branch 19 is ordered to proceed expeditiously with the pre-trial conference and trial of Civil Case No. 02-103191.
>
> Costs against petitioner.
>
> **SO ORDERED**.[11] (Emphasis supplied)

As to CTA Case No. 6484, the CTA denied BOC's motion to dismiss on the ground of prescription. When the CTA denied the BOC's motion for reconsideration, the BOC appealed to the CA, which reversed the questioned CTA resolutions. PSPC again sought recourse from this Court *via* a petition for review

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[10] *Pilipinas Shell Petroleum Corporation v. Republic*, 571 Phil. 418 (2008).

[11] *Id*. at 427-428.

on certiorari (G.R. No. 176380). By Decision[12] dated June 18, 2009, we denied the petition and held that the present case does not involve a tax protest case within the jurisdiction of the CTA to resolve. Citing our previous ruling in *Pilipinas Shell Petroleum Corporation v. Republic*[13] we ruled that the appropriate forum to resolve the issues raised by PSPC before the CTA, which were all related to the fact and efficacy of the payments made, should be the collection case before the RTC where PSPC can put up the fact of its payment as a defense.

With the resumption of proceedings in the RTC, the BOC filed an Amended Complaint, to which PSPC filed a Second Amended Answer. Pre-trial was terminated and the RTC summarized the issues in its Pre-Trial Order[14] dated September 9, 2009, to wit:

> The following issues raised by the plaintiffs:
>
> a. Whether or not plaintiff Republic has cause of action against defendants;
>
> b. Whether or not defendant Pilipinas Shell is [a] transferee in good faith [of] Tax Credit Certificates;
>
> c. Whether or not defendants are liable to pay the Republic the amount of Php10,088,912.00 represents unpaid taxes;
>
> d. Whether or not the Tax Credit Certificate was spurious and fraudulent.
>
> The following issues raised by the defendant Pilipinas Shell:
>
> a. Whether the defendants PSPC is liable for the amount of Php10,088,912.00 in customs duties and taxes covered by cancelled subject Tax Credit Certificates, However, there are sub-issues. These are include[d] in our pre-trial brief;
>
> b. Whether or not plaintiff is liable for moral and exemplary and Attorney's fees; and

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[12] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, 607 Phil. 569 (2009).

[13] *Supra* note 10.

[14] *Rollo,* pp. 390-395.

c. Whether or not defendant Filipino Way is liable to defendant PSPC in case of successful collection of customs taxes against PSPC.[15]

On November 16, 2009, PSPC filed a motion for summary judgment arguing that there is no basis for the Republic's claims considering that the subject TCCs were already fully utilized for the payment of PSPC's customs duties and taxes, and that EXCOM Resolution No. 03-05-99, the basis of the cancellation of the TCCs, was declared void and invalid in *Pilipinas Shell Petroleum Corporation v. CIR*,[16] where this Court likewise ruled that the subject TCCs cannot be cancelled on the basis of post-audit since a post-audit is not allowed and not a suspensive condition. PSPC further contended that the Republic's cause of action had already prescribed when it attempted to collect PSPC's customs duties and taxes only four years later, beyond the one-year prescriptive period to file a collection case. Lastly, PSPC asserted that even assuming the TCCs were fraudulently obtained by FWI, an innocent purchaser for value like PSPC cannot be prejudiced as held in the aforementioned case.

In its Comment/Opposition, BOC argued that rendition of summary judgment is inappropriate in this case in view of disputed facts that necessitate a full-blown trial where both parties can present evidence on their respective claims. BOC pointed out that PSPC cannot rely on the Deed of Assignment as proof that it had no participation in the issuance of the TCCs. PSPC should prove at the trial that there was a valid transfer in good faith and for value of the subject TCCs. As to the rulings in the case of *Pilipinas Shell Petroleum Corporation v. CIR*,[17] these are inapplicable here because first, what is involved therein are taxes owed to the BIR and there was no finding of fraud against PSPC whereas in the present case the BOC can readily prove during trial that PSPC committed fraud.

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[15] *Id*. at 394-395.

[16] 565 Phil. 613 (2007).

[17] *Id*.

On February 22, 2010, the RTC denied the motion for summary judgment in view of factual disputes which can only be resolved by trial on the merits. Specifically, it stated that presentation of evidence is necessary to determine if PSPC is a mere transferee in good faith and for value of the subject TCCs and that there was a valid transfer/assignment between PSPC and FWI.[18]

However, on motion for reconsideration by PSPC, the RTC reversed its earlier ruling and granted the motion for summary judgment under its Order[19] dated April 28, 2010. The RTC cited *Pilipinas Shell Corporation v. Republic*[20] which supposedly settled factual and legal issues raised by BOC in its pleadings and arguments, specifically PSPC's *not* having committed fraud. As there are no more disputed matters, the RTC held that there is no more need for a trial to prove that the subject TCCs have been fully utilized by PSPC and that they were cancelled due to an invalid post-audit under the authority of EXCOM Resolution No. 03-05-99.

The RTC thus decreed:

> WHEREFORE, premises considered, the Order dated February 22, 2010 is hereby REVERSED and SET ASIDE. The instant case against defendant PSPC is DISMISSED. However, the case against defendant Filipino Way still SUBSISTS.
>
> Let the trial of this case continue against the other Defendant namely, Filipino Way Industries, as previously scheduled on May 19, 2010 at 1:00 o'clock in the afternoon.
>
> SO ORDERED.[21]

With the denial of its motion for reconsideration, BOC appealed to the CA. By Decision dated February 13, 2013, the CA denied the appeal and affirmed the questioned orders of the RTC. BOC's motion for reconsideration was likewise denied by the CA.

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[18] *Rollo*, pp. 157-158.

[19] *Id*. at 66-72. Penned by Judge William Simon P. Peralta.

[20] *Supra* note 10.

[21] *Rollo,* p. 72.

According to the CA, BOC adopted a wrong mode of appeal because whether the RTC erred in rendering summary judgment is purely a legal issue, jurisdiction over which is vested only in this Court. Even assuming that the CA can entertain BOC's appeal, the CA said it found no genuine issues raised by the parties' pleadings and arguments that necessitate a full-blown trial. The CA further held that the rule on *stare decisis* applies in the present case considering that the legal and factual issues have been previously discussed and resolved by this Court in *Pilipinas Shell Petroleum Corporation v. CIR*.[22]

Issues

The following issues clearly emerge from the present controversy: (1) Does the Republic's (petitioner) appeal involve purely questions of law and hence a wrong remedy from the assailed RTC orders?; (2) Whether or not summary judgment is proper; (3) Does the ruling in *Pilipinas Shell Petroleum Corporation v. CIR*[23] apply to this case under the doctrine of *stare decisis*; and (4) Whether or not petitioner's claim is barred by prescription.

Petitioner's Arguments

Citing the cases of *Nocom v. Camerino*[24] and *Heirs of Baldomero Roxas v. Garcia*[25] petitioner argues that since a summary judgment has the effect of adjudication on the merits, appeal under Rule 41 of the Rules of Court is the proper remedy.

As to the propriety of summary judgment rendered by the RTC, petitioner underscores that the collection case it filed against PSPC is founded on the fact that the latter utilized the fraudulently-secured TCCs for payment of customs duties and taxes that arose from its various oil importations, and their cancellation did not extinguish its liability to the government.

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[22] *Supra* note 16.

[23] *Id*.

[24] 598 Phil. 214 (2009).

[25] 479 Phil. 918 (2004).

The matter of whether or not PSPC is a transferee in good faith and for value is a genuine issue to be resolved, and must be ventilated in a full trial. The issue of whether or not PSPC is guilty of fraud likewise calls for the presentation of evidence at the trial.

Petitioner mentions other factual inquiries which it said arose in this case, such as the manner by which FWI acquired the subject TCCs; the legality of their transfer to PSPC; the results of the post-audit conducted on the subject TCCs; whether PSPC claimed a return of the consideration from FWI upon the cancellation of the TCCs; the veracity of the letter from Equitable Banking Corporation stating that the credit memos, supposedly used by FWI in securing the TCCs, do not conform to the bank's records; and what are the company papers and export documents submitted for the claim of tax credits.

Petitioner also argues that *Pilipinas Shell Petroleum Corporation v. CIR*[26] is not applicable as said case involves the assessment of deficiency taxes which was filed before the CTA, hence a tax case, whereas here it is a civil case for collection of sum of money which was filed in a regular court. More important, the facts in the aforesaid case did not clearly establish the fraudulent acts committed by the original grantees of tax credits in the procurement of TCCs from the Center, whereas in the present case, petitioner can sufficiently prove that the documents submitted by the original grantee (FWI) for the claim of tax credits were forgeries and the TCCs subsequently issued had absolutely no monetary value to back up their issuance. Thus, where the facts in the two cases under consideration are different, *stare decisis* finds no application.

On other legal issues that were previously settled in *Pilipinas Shell Petroleum Corporation v. CIR*,[27] petitioner submits there is an extreme urgency to revisit this Court's ruling —

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[26] *Supra* note 16.

[27] *Id*.

x x x because of the great danger and prejudice it had caused to the several collection cases filed by the government which are pending before several regular courts involving TCCs in the hundreds of millions of pesos. Most defendants in these cases assert to be "buyers or transferees in good faith" and capitalize on the ruling of this Honorable Court in the *Shell case*. However, if the only basis for finding good faith on the part of the transferee of TCCs is the mere approval of the transfer by the DOF One Stop Shop Center, then all these pending cases, as above-mentioned, must be dismissed, since all the transfers of the TCCs were approved by the Center. This is precisely the very reason why the government filed several cases before the Office of the Ombudsman against the personnel and officers of the One Stop Shop Center, including private individuals, because of the collusion and conspiracy they contrived in order to defraud the government of several billions of pesos involving the issuance and transfers of TCCs. This is now infamously known as the "*tax credit scam*" because it was committed in grandiose style by a crime syndicate.

In the final analysis, the ultimate victim in this scheme is not the Republic but the Filipino people who did not commit mistake or wrongdoing, but rather, its agents. Hence, the State cannot be made to bear the loss of revenues on account of scheming individuals or entities that are out to defraud the government or evade the payment of tax liabilities.[28]

Respondent's Arguments

PSPC contends that the assailed orders of the RTC granting summary judgment has already attained finality since petitioner availed of the wrong remedy before the CA. It asserts that the CA did not err in upholding the RTC's ruling that there exists no genuine issues of fact in the present case.

On the alleged fraudulent issuance of the subject TCCs, PSPC maintains that it cannot be prejudiced by such fraud which, by petitioner's own admission, was committed by FWI. Being a transferee in good faith and for value of the subject TCCs, these matters raised by petitioner are thus irrelevant. That PSPC

[28] *Rollo,* p. 36.

is a transferee in good faith and for value was admitted by petitioner during the pre-trial hearing held on September 9, 2009.

PSPC argues that, contrary to petitioner's claims, the CA correctly applied this Court's rulings in *Pilipinas Shell Petroleum Corporation v. CIR*[29] under the doctrine of *stare decisis*. In any event, it asserts that petitioner's cause of action had already prescribed since the subject TCCs were already fully utilized as payment for PSPC's customs duties and taxes on November 17, 1997, while petitioner attempted to collect only on February 15, 2002 or four years later, beyond the one year period to file the present case.

Our Ruling

The petition is meritorious.

Propriety of Summary Judgment a Question of Law, hence, the Remedy is a Petition for Review Under Rule 45

Section 2, Rule 41 of the 1997 Rules of Civil Procedure, as amended, provides for two remedies from the final orders or judgments of the RTC in the exercise of its original jurisdiction, *viz.*:

Section 2. ***Modes of appeal***. –

(a) ***Ordinary appeal***. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

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[29] *Supra* note 16.

(c) ***Appeal by certiorari***. – In all cases **where only questions of law are raised or involved**, the appeal shall be **to the Supreme Court by petition for review on certiorari in accordance with Rule 45**. (Emphasis supplied)

Thus, when an appeal raises only pure questions of law, it is this Court that has the sole jurisdiction to entertain the same. On the other hand, appeals involving both questions of law and fact fall within the exclusive appellate jurisdiction of the CA.[30]

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[31]

We have held that the question of whether the RTC erred in rendering summary judgment is one of law, thus:

Any review by the appellate court of the propriety of the summary judgment rendered by the trial court based on these pleadings would not involve an evaluation of the probative value of any evidence, but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents. Therefore, what would inevitably arise from such a review are pure

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[30] *Cucueco v. Court of Appeals,* 484 Phil. 254, 264 (2004), citing Article VIII, Sec. 5(2)(e), 1987 Constitution; Rule 45, Rules of Court; and *Far East Marble (Phils.), Inc. v. Court of Appeals,* G.R. No. 94093, August 10, 1993, 225 SCRA 249, 255.

[31] *Id*. at 264, 265.

questions of law, and not questions of fact, which are not proper in an ordinary appeal under Rule 41, but should be raised by way of a petition for review on *certiorari* under Rule 45.[32]

Petitioner raised as sole issue in its brief filed with the CA the RTC's erroneous grant of summary judgment in favor of PSPC based on its finding that there exists no genuine factual issue. Obviously, it availed of the wrong mode of appeal when it filed a notice of appeal in the RTC under Section 2(a), Rule 41, instead of a petition for review on certiorari in this Court under Rule 45.

Relaxation of the Rule on Appeal

However, despite such lapse, a relaxation of the rule on appeal is justified under the circumstances. The CA found no reversible error in the grant of summary judgment in favor of PSPC. Accordingly, it affirmed the assailed orders of the RTC.

Considering the Republic's stake in the outcome of the proceedings in Civil Case No. 02-103191, among the several collection suits it has instituted in the drive to recover huge revenue losses from spurious tax credit certificates that proliferated in the 1990s, we cannot accede to PSPC's contention that petitioner's erroneous appeal has rendered the Orders dated April 28, 2010 and July 2, 2010 of the RTC final and executory.

In *Barangay Sangalang v. Barangay Maguihan*,[33] we ratiocinated:

> In any case, as in the past, this Court has recognized the emerging trend towards a liberal construction of the Rules of Court. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation,* this Court stated:
>
> > Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed

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[32] *Id.* at 266.

[33] 623 Phil. 711 (2009).

liberal construction of the rules when to do so would serve the demands of substantial justice and equity. In *Aguam v. Court of Appeals*, the Court explained:

> The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

Thus, notwithstanding petitioner's wrong mode of appeal, the CA should not have so easily dismissed the petition, considering that the parties involved are local government units and that what is involved is the determination of their respective territorial jurisdictions. x x x[34]

[34] *Id*. at 723-725.

Summary Judgment Not Proper

Under Rule 35 of the 1997 Rules of Civil Procedure, as amended, except as to the amount of damages, when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed:

> Section 1. *Summary Judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.[35] Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.[36]

For a full-blown trial to be dispensed with, the party who moves for summary judgment has the burden of demonstrating clearly the absence of genuine issues of fact, or that the issue posed is patently insubstantial as to constitute a genuine issue. Genuine issue means an issue of fact which calls for the

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[35] *Nocom v. Camerino*, *supra* note 24, at 233.

[36] *Asian Construction and Development Corporation v. PCIB*, 522 Phil. 168, 178 (2006).

presentation of evidence as distinguished from an issue which is fictitious or contrived.[37]

Petitioner's complaint is premised mainly on the alleged fraudulent issuance and transfer of the subject TCCs. As stated in the pre-trial order, petitioner submitted for trial the issue of whether or not PSPC is a transferee in good faith.

In *Pilipinas Shell Petroleum Corporation v. CIR*,[38] we ruled that "[t]he transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center."

> A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.[39]

The RTC found no genuine factual issue as far as PSPC's status as innocent purchaser in good faith and for value, relying on the following underlined portion of this Court's decision in *Pilipinas Shell Petroleum Corporation v. Republic*[40] (March 6, 2008):

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[37] *Gubat v. National Power Corporation,* 627 Phil. 551, 564 (2010), citing *Philippine Countryside Rural Bank (Liloan Cebu), Inc. v. Toring*, 603 Phil. 203, 218 (2009) and *Manufacturers Hanover Trust Co. v. Guerrero*, 445 Phil. 770, 776 (2003).

[38] *Supra* note 16, at 644.

[39] *Id*.

[40] *Supra* note 10, at 424-425.

THE FILING OF THE COLLECTION CASE WAS A PROPER REMEDY

Assessments inform taxpayers of their tax liabilities. Under the TCCP, the assessment is in the form of a liquidation made on the face of the import entry return and approved by the Collector of Customs. Liquidation is the **final computation and ascertainment by the Collector of Customs of the duties due on imported merchandise** based on official reports as to the quantity, character and value thereof, and the Collector of Customs' own finding as to the applicable rate of duty. A liquidation is considered to have been made when the entry is officially stamped "liquidated."

Petitioner claims that it paid the duties due on its importations. Section 1603 of the old TCCP stated:

> Section 1603. *Finality of Liquidation.* When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative.

An assessment or liquidation by the BoC attains finality and conclusiveness one year from the date of the final payment of duties except when:

(a) there was fraud;

(b) there is a pending protest or

(c) the liquidation of import entry was merely tentative.

None of the foregoing exceptions is present in this case. There was no fraud as petitioner claimed (and was presumed) to be in good faith. Respondent does not dispute this. Moreover, records show that petitioner paid those duties without protest using its TCCs. Finally, the liquidation was not a tentative one as the assessment had long become final and incontestable. Consequently, pursuant to *Yabes* and because of the cancellation of the TCCs, respondent had the right to file a collection case. (Underscoring supplied)

Upon reading the entire text of the above decision, it can be gleaned that PSPC (petitioner therein) had questioned the jurisdiction of the RTC, arguing that said court has no jurisdiction

over Civil Case No. 02-103191 (collection case) in view of the pendency of PSPC's petition for review in the CTA challenging the BOC's assessment of the customs duties and taxes covered by the same TCCs involved in this case. Citing *Yabes v. Flojo*[41] PSPC contended that the RTC acquires jurisdiction over a collection case only if an assessment made by the CIR has become final and incontestable.

Addressing the issue of prematurity of BOC's collection case in the RTC, we cited three exceptions from the rule that an assessment becomes final and conclusive one year from the date of final payment of duties: among which is when there is fraud. The decision then declares that none of the cited exceptions are present, specifically stating that there was no fraud as petitioner claimed (and was presumed) to be in good faith, and the BOC does not dispute it. *It is this statement which the RTC deemed as establishing PSPC's status as transferee in good faith and for value of the subject TCCs.* However, we find the RTC's reliance on this statement in the earlier case involving the issue of jurisdiction of the RTC as misplaced and erroneous. Such statement pertained to fraud in the computation or accuracy of the customs duties and taxes due on the subject importations, which concerns the correctness of the quantity and class of goods declared by the importer PSPC as basis for the assessment by the BOC. There may have been preconceived courses of action purposely adopted by importers to evade the payment of the correct customs duties. Clearly, the fraud mentioned in the said decision does not refer to the fraud in the issuance and transfer of TCCs for which the petitioner seeks to recover unpaid customs duties and taxes, subject matter of the present controversy. The latter has to do with presentation of spurious documents that would render the TCCs worthless, resulting in non-payment of the assessed customs duties and taxes.

It bears stressing also that the collection case is not based on any revised or new assessment of customs duties and taxes on PSPC's oil importations. As we noted in *Pilipinas Shell*

[41] 200 Phil. 672 (1982).

Petroleum Corporation v. Commissioner of Customs[42] BOC's demand letters to PSPC merely reissued the original assessments that were previously settled by it with the use of the TCCs. But since the TCCs were cancelled, the tax liabilities of PSPC under the original assessments were considered unpaid; hence, the demand letters and *actions for collection.*

Moreover, it would be absurd to interpret such statement in our decision in *Pilipinas Shell Petroleum Corporation v. Republic*[43] (March 6, 2008) as a judicial declaration of PSPC's status as a transferee in good faith and for value of the subject TCCs when in the same decision we ordered the case remanded to the RTC for proceeding with the pre-trial where issues for trial still have to be determined by the parties. Neither should such statement be regarded as an admission by petitioner because the latter's complaint was anchored chiefly on the alleged fraud and irregularity in the issuance and transfer of the TCCs, with both the transferee (PSPC) and transferor (FWI) impleaded as defendants.

In its Comment, PSPC claims that during the pre-trial hearing, the Solicitor General's representative admitted that PSPC had no participation in the issuance of the subject TCCs. However, perusal of the transcript of stenographic notes (TSN) reveals that what was admitted by petitioner was only the fact of issuance and eventual transfer/assignment to PSPC of the TCCs. The succeeding portions of the TSN, omitted in the Comment, clearly showed that Sr. State Solicitor Bustria repeatedly denied Atty. Lopez's (PSPC's counsel) proposed stipulations on the valuable consideration for the TCCs, the approval by the concerned agencies of the deed of the said assignment/transfer and related matters.[44]

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and

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[42] *Supra* note 12, at 579.

[43] *Supra* note 10.

[44] *Rollo,* pp. 372-383.

concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another. It is a question of fact and the circumstances constituting it must be alleged and proved in the court below.[45] Petitioner's allegations of fraud and irregularity in the issuance to FWI and eventual transfer to PSPC of the subject TCCs require presentation of evidence in a full-blown trial. PSPC, in turn, can present its own evidence to prove the status of a purchaser or transferee in good faith and for value. The solidary liability of PSPC and FWI for the amount covered by the TCCs depends on the good faith or lack of it on the part of PSPC.

In ascertaining good faith, or the lack of it, which is a question of intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined.[46] Good faith connotes an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of law, together with the absence of all information or belief of facts, would render the transaction unconscientious.[47] The ascertainment of good faith, or lack of it, and the determination of whether due diligence and prudence were exercised or not, are questions of fact.[48]

Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for

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[45] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs,* 583 Phil. 706, 723 (2008), citing *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.,* 481 Phil. 626, 640 (2004) and *Commissioner of Internal Revenue v. Ayala Securities Corporation,* 162 Phil. 287, 296 (1976).

[46] *Philippine National Bank v. Heirs of Estanislao and Deogracias Militar,* 526 Phil. 788, 798 (2006), citing *Expresscredit Financing v. Spouses Velasco,* 510 Phil. 342, 352 (2005).

[47] *Id.*, citing *University of the East v. Jader,* 382 Phil. 697, 705 (2000).

[48] *Id.* at 799.

summary judgment cannot take the place of trial.[49] As certain facts pleaded are contested by the parties in this case, rendition of summary judgment is not proper.

Prescription

As already mentioned, BOC's collection suit is not based on any new or revised assessment because the original assessments which had long become final and uncontestable, were already settled by PSPC with the use of the subject TCCs.

With the cancellation of the TCCs, the tax liabilities of PSPC under the original assessments were considered unpaid, hence BOC's demand letters and the action for collection in the RTC. To repeat, these assessed customs duties and taxes were previously assessed and paid by the taxpayer, only that the TCCs turned out to be spurious and hence worthless certificates that did not extinguish PSPC's tax liabilities.

The applicable provision is Section 1204 of the Tariff and Customs Code, which states:

> Section 1204. ***Liability of Importer for Duties***.— Unless relieved by laws or regulations, the liability for duties, taxes, fees and other charges attaching on importation constitutes **a personal debt due from the importer to the government which can be discharged only by payment in full** of all duties, taxes, fees and other charges legally accruing. It also constitutes a lien upon the articles imported which may be enforced while such articles are in the custody or subject to the control of the government. (Emphasis supplied)

As we held in *Pilipinas Shell Petroleum Corporation v. Republic*[50]:

> Under this provision, import duties constitute a personal debt of the importer that must be paid in full. The importer's liability therefore

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[49] *Asian Construction and Development Corporation v. Philippine Commercial International Bank*, *supra* note 36, at 179, citing *Evadel Realty and Development Corporation v. Spouses Soriano*, 409 Phil. 450, 461 (2001).

[50] *Supra* note 10.

constitutes a lien on the article which the government may choose to enforce while the imported articles are either in its custody or under its control.

When respondent released petitioner's goods, its (respondent's) lien over the imported goods was extinguished. Consequently, respondent could only enforce the payment of petitioner's import duties in full by filing a case for collection against petitioner.[51]

Stare Decisis

The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[52] Accordingly, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[53]

The RTC and CA both ruled that *Pilipinas Shell Petroleum Corporation v. CIR*[54] applies to the present case, stating that the legal issues have already been settled by this Court such as the ineffective cancellation by the Center of TCCs which have been fully utilized by the importer/taxpayer and the sole responsibility under the Liability Clause in the TCC of the original grantee for its fraudulent issuance by the Center.

We disagree.

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[51] *Id*. at 426.

[52] *Fermin v. People*, 573 Phil. 278, 287 (2008), citing *Castillo v. Sandiganbayan,* 427 Phil. 785, 793 (2002).

[53] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* 573 Phil. 320, 336-337 (2008).

[54] *Supra* note 16.

Pilipinas Shell Petroleum Corporation v. CIR[55] involved TCCs used by PSPC that were also cancelled for alleged fraud in their issuance and transfer. However, in the said case, there was a finding, on the basis of evidence presented before the CTA, that PSPC is a transferee in good faith and for value and that no evidence was adduced that it participated in any way in the issuance of the TCCs to the corporations who in turn conveyed the same to PSPC.

PSPC's status as transferee in good faith of the TCCs assigned to it by FWI is yet to be established or proven at the trial. In fact, this Court in upholding the jurisdiction of the RTC directed it to proceed with the pre-trial and trial proper. Petitioner should be given the opportunity to substantiate its allegations of fraud in the issuance and transfer of the TCCs which PSPC used to pay for the customs duties and taxes due on its oil importations. Whether *Pilipinas Shell Petroleum Corporation v. CIR*[56] applies squarely to the present case may be determined only after such trial. If it is shown that PSPC was a party to the fraud as when it did not obtain the TCC for value or has knowledge of its fraudulent issuance, it will be liable for the taxes and for the fraud committed as provided for by law.

As to the full utilization of the TCCs being claimed by PSPC, our ruling in *Pilipinas Shell Petroleum Corporation v. CIR* is clear that the taxpayer must have no participation in the fraud, *viz.*:

> Sec. 3, letter l. of AO 266, in relation to letters a. and g., does give ample authority to the Center to cancel the TCCs it issued. Evidently, the Center cannot carry out its mandate if it cannot cancel the TCCs it may have erroneously issued or those that were fraudulently issued. It is axiomatic that when the law and its implementing rules are silent on the matter of cancellation while granting explicit authority to issue, an inherent and incidental

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[55] *Id.*

[56] *Id.*

power resides on the issuing authority to cancel that which was issued. A caveat however is required in that while the Center has authority to do so, it must bear in mind the nature of the TCC's immediate effectiveness and validity for which **cancellation may only be exercised before a transferred TCC has been fully utilized** or cancelled by the BIR after due application of the available tax credit to the internal revenue tax liabilities of an innocent transferee for value, **unless of course the claimant or transferee was involved in the perpetration of the fraud in the TCC's issuance, transfer, or utilization. The utilization of the TCC will not shield a guilty party from the consequences of the fraud committed.**[57] (Emphasis supplied)

In sum, the CA erred in affirming the RTC orders granting summary judgment in favor of PSPC considering that there exists a genuine issue of fact and that *stare decisis* finds no application in this case.

WHEREFORE, the petition is **GRANTED.** The Decision dated February 13, 2013 and Resolution dated June 3, 2013 of the Court of Appeals in CA-G.R. CV No. 95436 are **REVERSED** and **SET ASIDE**.

The case is hereby **REMANDED** to the Regional Trial Court of Manila, Branch 49 for the conduct of trial proceedings in Civil Case No. 02-103191 with utmost **DELIBERATE DISPATCH**.

No pronouncement as to costs.

SO ORDERED.

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

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[57] *Id.* at 652.

[*] Designated additional Member in lieu of Associate Justice Francis H. Jadeleza, per Raffle dated October 13, 2014.

SECOND DIVISION

[G.R. No. 209559. December 9, 2015]

ENCHANTED KINGDOM, INC., *petitioner, vs.* **MIGUEL J. VERZO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED; EXCEPTIONS.—** Well-settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. **LABOR AND SOCIAL LEGISLATION; PROBATIONARY EMPLOYMENT.—** A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer.

3. **ID.; ID.; TERMINATION.—** A probationary employee, like a regular employee, enjoys security of tenure. In cases of probationary employment, however, aside from just or authorized causes of termination, under Article 281 of the Labor Code,

the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement.

4. ID.; ID.; REQUIREMENT OF INFORMING THE PROBATIONARY EMPLOYEE OF THE STANDARDS FOR REGULARIZATION AT THE TIME OF ENGAGEMENT; FAILURE THEREOF WILL RENDER THE EMPLOYEE REGULAR; EXCEPTION IS WHEN THE JOB IS SELF-DESCRIPTIVE.— Section 6(d), Rule I, Book VI of the Implementing Rules of the Labor Code provides that if the employer fails to inform the probationary employee of the reasonable standards on which his regularization would be based at the time of the engagement, then the said employee shall be deemed a regular employee. x x x An exception to the foregoing rule is when the job is self-descriptive, as in the case of maids, cooks, drivers, or messengers. In *Aberdeen Court, Inc. v. Agustin*, it has been held that the rule on notifying a probationary employee of the standards of regularization should not be used to exculpate an employee who acted in a manner contrary to basic knowledge and common sense in regard to which there was no need to spell out a policy or standard to be met. In the same light, an employee's failure to perform the duties and responsibilities which had been clearly made known to him would constitute a justifiable basis for a probationary employee's non-regularization.

5. ID.; ID.; ID.; SUBSTANTIALLY COMPLIED WHERE THE PROBATIONARY EMPLOYEE WAS GIVEN REASONABLE TIME AND OPPORTUNITY TO BE MADE FULLY AWARE OF WHAT IS EXPECTED OF HIM DURING THE EARLY PHASES OF THE PROBATIONARY PERIOD.— [T]he purpose of the law in requiring that an employee be notified of the standards for his regularization during his probationary employment is to simply afford him due process, so that the employee will be aware that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. [W]hile it may be argued that ideally employers should immediately inform a probationary employee of the standards for his regularization from day one, strict compliance thereof is not required. The true test of compliance with the requirements of the law is, of course, one of reasonableness. As long as the probationary

employee is given a reasonable time and opportunity to be made fully aware of what is expected of him during the early phases of the probationary period, the requirement of the law has been satisfied. At any rate, a total of only fourteen (14) days had just lapsed when Verzo officially received the letter containing what he already knew – that he was still a probationary employee.

6. ID.; ID.; PUNCTUALITY; PROBATIONARY EMPLOYEE EXPECTED TO ABIDE BY THE WORKING HOURS IMPOSED.— On punctuality, in the recent case of *Carvajal v. Luzon Development Bank*, the Court has emphasized that: Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the [employer].

7. ID.; ID.; TERMINATION FOR FAILURE TO COMPLY WITH THE SET STANDARDS; WRITTEN NOTICE WITHIN A REASONABLE TIME FROM DATE OF TERMINATION IS SUFFICIENT.— Whether or not Verzo was afforded the opportunity to explain his side is of no consequence. Under Section 2 Rule I, Book VI of the Implementing Rules of the Labor Code: x x x If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, **it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination**. In *Philippine Daily Inquirer v. Magtibay*, the Court stressed that notice and hearing are not required in case a probationary employee is not retained for failure to comply with the reasonable standards set by his employer.

8. ID.; ID.; RIGHT OF MANAGEMENT, EQUALLY RESPECTED.— While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play.

APPEARANCES OF COUNSEL

Tan Acut Lopez and Pison Law Offices for petitioner.
Picazo Buyco Tan Fider & Santos for respondent.

D E C I S I ON

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Enchanted Kingdom, Inc. *(Enchanted)*, assailing the March 26, 2013 Decision[2] and the October 11, 2013 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 118075. Through the assailed dispositions, the CA *reversed* the September 27, 2010[4] and November 30, 2010[5] Resolutions of the National Labor Relations Commission *(NLRC),* concurring in the finding of the Labor Arbiter *(LA)*, that the complaint for illegal dismissal, damages and attorney's fees filed by respondent Miguel J. Verzo *(Verzo)* against Enchanted was without merit.[6]

Position of Enchanted

On August 19, 2009, Verzo was hired by Enchanted to work as Section Head – Mechanical & Instrumentation Maintenance *(SH-MIM)* for its theme park in Sta. Rosa City, Laguna, for a period of six (6) months on probationary status. He was tasked to conduct "mechanical and structural system assessments,"

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[1] *Rollo*, pp. 3-55.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan-Castillo and Amy C. Lazaro-Javier, concurring; *id*. at 28-42.

[3] *Id*. at 44-47.

[4] *Id*. at 239-244.

[5] *Id*. at 288-289.

[6] Decision, dated June 8, 2010, penned by Labor Arbiter Napoleon V. Fernando. *Id*. at 181-183.

as well as to inspect and evaluate the "conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards."[7] He was also provided with a detailed list[8] of responsibilities that he should fulfill.

During the probationary period, Enchanted assessed Verzo's performance as not up to par. On January 26, 2010, Robert M. Schoefield *(Schoefield)*, one of Verzo's fellow section heads, made his recommendation to Rizalito M. Velesrubio *(Velesrubio)*, Verzo's immediate supervisor, that he should not be considered for regularization. In his memorandum,[9] Schoefield noted the following: Verzo failed to take action to replace the faucets in the lavatories of the park and to ensure that the proximity brackets of one of the rides were properly installed; he mishandled the operation of the park's submersible pump, which resulted in the overflow of the sludge from Enchanted's sewage treatment plant towards the parking entrance; he once reported that the ZORB Ball pond had sufficient water for its operation, but the following day, one of Enchanted's patrons got injured due to the pond's low water level; and he often used company time browsing the internet for his personal use.

Schoefield's evaluation was shared by another section head, Jun Montemayor *(Montemayor)*. In his memorandum,[10] addressed to Velesrubio, Montemayor made the following observations[11]:

1. His performance was more of a "rank and file" rather than that of a Section Head because even if there was a need for him to start or there was urgent work to attend, he would still go home or take his "lunchtime."

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[7] *Id*. at 58-59.

[8] *Id*. at 60-63.

[9] *Id*. at 197.

[10] *Id*. at 198.

[11] *Id*. at 193 (paraphrased).

2. He had no initiative or even if he was called for certain activities, project or work, he would disappear or would not involve himself at all.

3. In several instances, he was observed using company computers during office hours, searching for motorcycle models and clubs which were all not related to his work, as he admitted during their meeting.

4. He was very slow in making decisions or very slow to act resulting in delayed results or "no result" at all.

5. Punctuality was also a concern. Oftentimes, he would report at 9:00 o'clock in the morning, affecting productivity.

6. He was afraid of giving orders/instruction to his subordinates.

Velesrubio agreed with the observations of Schoefield and Montemayor that Verzo was lax in the performance of his duties. In his memorandum[12] addressed to Nympha C. Maduli *(Maduli)*, head of Enchanted's Human Resources Department, Velesrubio reported that Verzo failed to check a problem with a lift for several days despite earlier instructions to him to fix it. Due to his failure, Velesrubio had no recourse but to check and undertake the repair of the lift himself with the assistance of other technicians.

Velesrubio added that, in another attraction, Verzo did not immediately comply with his instructions to check and repair a malfunctioning water pump for several weeks. The problem was only resolved when Velesrubio did a follow up on his instruction.[13]

According to Velesrubio, Verzo's incompetence extended to his lack of the pertinent technical knowledge needed for the position. In one instance, Velesrubio instructed Verzo to check

[12] *Id.* at 199.

[13] *Id.*

the expansion valve of the air-conditioning unit in one of the attractions. He was surprised, however, to find out that Verzo was unaware that the air-conditioning unit had an expansion valve.[14]

Taking all these into consideration, on February 3, 2010, Enchanted furnished Verzo a copy of the Cast Member Performance Appraisal[15] for Regularization which reported that he only obtained a score of 70 out of 100. Aside from indicating the numerical score, Enchanted's evaluation of his performance contained the following notations under Supervisor's Over-All Assessment:

> Lacking in supervisory skill;
> Incompetent technically;
> Lacking in initiative/sense of responsibility.[16]

On February 15, 2010, Enchanted formally informed Verzo that he did not qualify for regularization because his work performance for the past five (5) months "did not meet the requirements of the position of Section Head for Mechanical and Instrumentation Maintenance, xxx."[17]

Position of Verzo

Believing that he was arbitrarily deprived of his employment, Verzo filed a complaint for illegal dismissal, damages and attorney's fees before the LA.

In his complaint, Verzo claimed that it was only after he was formally hired by Enchanted that he was informed of his probationary status. And even after despite being placed on a probationary status, he was not advised as to the standards required for his regularization.[18]

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[14] *Id*.

[15] *Id*. at 198.

[16] *Id*. at 64.

[17] *Id*. at 66.

[18] Records, p. 129.

Notwithstanding the status of his employment, Verzo believed that he performed his job well.[19] Not only was he always punctual and regular in his attendance, but he was also respectful of his superiors and he maintained a good working relationship with his subordinates. In addition, during his tenure with Enchanted, he was able to introduce useful innovations in the maintenance procedures of the park.[20]

For Verzo, the controversy began on January 5, 2010, when Schoefield approached and told him that Enchanted had decided not to continue with his employment. While Velesrubio confirmed the news relayed by Schoefield, he refused to provide any explanation therefor. Instead, Velesrubio advised him to resign so that he could be provided with a certificate of employment that he could use in the future.[21]

Verzo asked Velesrubio several times to explain why he could not be considered for regularization, but to no avail. Verzo then approached Federico Juliano *(Juliano)*, Enchanted's Executive Vice President for operations, to seek advice on his dilemma. Aside from telling Verzo that he apparently lacked control over the personnel under his supervision, Juliano did not give any explanation why Enchanted would not consider him for regularization and only advised him to just resign.[22]

It was only after Verzo submitted a letter,[23] dated January 26, 2010, to Velesrubio that the latter called for a meeting on that same day. Instead of discussing the reason why he could not be regularized, however, Velesrubio, together with Schoefield and Montemayor, proceeded to accuse him of imagined transgressions. Aside from the fact that it was the first time that he heard of such allegations, he was not given the chance to explain his side either.[24]

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[19] *Id.*

[20] *Id.* at 130.

[21] *Id.* at 131.

[22] *Id.* at 132.

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

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

On February 3, 2010, Verzo went to the office of Maduli to receive his performance appraisal. He was again advised to just resign in exchange for a certificate of employment. Maduli then showed him a copy of his performance appraisal and the memoranda submitted by Velesrubio, Schoefield and Montemayor which cited his shortcomings. Verzo then asked for time to answer the allegations in writing.[25]

To his surprise, before he was able to submit his written reply to the allegations hurled against him, Verzo received a letter, dated February 15, 2010, from Enchanted, informing him that he was being terminated for his failure to qualify for regularization.

The Decision of the LA

On June 8, 2010, the LA rendered its decision dismissing Verzo's complaint for lack of merit. The LA explained that his status being probationary, his employment was only temporary and, thus, could be terminated at any time. The LA stated that as long as the termination was made before the end of the six-month probationary period, Enchanted was well within its rights to sever the employer-employee relationship with Verzo.[26]

The Decision of the NLRC

On September 27, 2010, the NLRC issued a resolution denying Verzo's appeal for lack of merit. According to the NLRC, his contention that he was not furnished or shown a probationary contract so that he could have been advised of the standards for regularization was belied by the fact that he himself attached to his position paper his signed contract of employment informing him of his probationary status and the job description of his position at Enchanted.[27]

The NLRC opined that Verzo's position as SH-MIM was not highly technical as to require that his contract with Enchanted

[25] *Id*. at 74-75.

[26] *Id*. at 183.

[27] *Id*. at 242.

specify the reasonable standards for regularization. Assuming that it was required, the NLRC considered the fact that he signed his employment contract detailing the standards expected of him.[28] The NLRC stated that as a licensed engineer, Verzo had a better comprehension of things compared to an average worker. Thus, the NLRC found it incredible that he was unaware of what was professionally expected of him for his regularization.[29]

In concluding that Verzo was rightfully severed from his employment, the NLRC took into consideration the Cast Member Performance Appraisal for Regularization which showed that he failed to meet the qualifications or requirements set by Enchanted.[30] The NLRC concluded that Enchanted acted within its rights when it dismissed him, considering that his inability to perform his job concerned the very safety and security of Enchanted's patrons.[31]

Verzo sought reconsideration but his motion was denied.[32]

The Decision of the CA

The CA, in the assailed decision, *reversed* the findings of the NLRC and the LA. It was of the view that the probationary contract between the parties failed to set the standards that would gauge Verzo's fitness and qualification for regular employment. According to the CA, "the NLRC's supposition that Verzo may not be apprised of the standard for regularization – on the assumption that given his itinerary and education, he has wider comprehension of what is expected of him professionally – is misplaced." [33] For said reason, the CA opined that he should be considered a regular employee of Enchanted.

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[28] *Id*. at 243.

[29] *Id*. at 242-243.

[30] *Id*. at 242.

[31] *Id*. at 243.

[32] *Id*. at 288-289.

[33] *Id*. at 36-37.

The CA further stated that even if Verzo was considered a probationary employee, his termination was tainted with bad faith. The appellate court gave weight to the conversation between Velesrubio and Verzo prior to the release of the actual performance evaluation, where the former intimated to the latter that he would not be regularized and even advised him to resign. It also pointed out that the performance evaluation by Enchanted failed to specify the instances of Verzo's unfitness and to indicate that the numerical rating of 70 out of 100, given by Enchanted, was unsatisfactory or poor or that it was below the rating required for regularization. The CA concluded that Enchanted's dismissal of Verzo was arbitrary.[34]

Enchanted sought reconsideration, but was rebuffed.[35]

Hence, this petition with the following

ASSIGNMENT OF ERRORS[36]

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, IN THAT IT SERIOUSLY ERRED IN NULLIFYING THE RESOLUTIONS OF THE NLRC WHICH UNIFORMLY FOUND RESPONDENT A PROBATIONARY EMPLOYEE WHO FAILED TO QUALIFY FOR REGULAR EMPLOYMENT, CONSIDERING THAT:

A) AT THE TIME OF ENGAGEMENT, RESPONDENT WAS INFORMED OF THE STANDARDS FOR HIS REGULARIZATION.

B) RESPONDENT'S PERFORMANCE WAS DULY EVALUATED BEFORE HE WAS DISMISSED FROM EMPLOYMENT FOR FAILING TO QUALIFY FOR REGULAR EMPLOYMENT.

C) RESPONDENT IS NOT ENTITLED TO REINSTATEMENT, BACKWAGES, MORAL DAMAGES, AND ATTORNEY'S FEES.

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[34] *Id*. at 38-39.
[35] *Id*. at 44-47.
[36] *Id*. at 8-9.

D) FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION COINCIDING WITH THAT OF THE LABOR ARBITER ARE ACCORDED GREAT RESPECT, IF NOT FINALITY.

Enchanted asserts that the CA committed a palpable error for failing to accord respect and finality to the findings of the LA and the NLRC that it validly terminated Verzo for failure to qualify for regular employment. The findings of the labor officials should have been respected by the CA.[37]

On the merits of the case, Enchanted insists that Verzo was apprised of his probationary status and the standards that were expected of him at the time of his employment. Its letter, dated August 26, 2009, specifically mentioned that he was being placed on probationary status from August 19, 2009 to February 18, 2010. The same letter was also accompanied by a Job Description of his position which detailed his duties and responsibilities. Enchanted also points out that both the probationary contract and Job Description were signed by Verzo to signify his conformity.[38] Enchanted argues that his dismissal was valid because he failed to adhere to the dictates of common sense that required him to act in accordance with his position as SH-MIM.[39] According to Enchanted, Verzo need not be informed of his specific duties and responsibilities because his job was self-descriptive.[40]

In further support of its position that Verzo's dismissal was valid, Enchanted asserts that the CA's conclusion, that he was being made to resign even before his evaluation, was entirely baseless. Enchanted insists that it conducted its evaluation of Verzo for regularization on January 26, 2010 after considering all the evidence it had on record. It only notified Verzo of its

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[37] *Id*. at 18-20.

[38] *Id*. at 9-15.

[39] *Id*. at 11-13.

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

conclusion on February 15, 2010, or twenty (20) days after it had evaluated him.

The Court's Ruling

Well-settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.

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

In the case at bench, the factual findings of the LA and the NLRC differ from that of the CA. This divergence of positions between the CA on one hand, and the labor tribunals below constrains the Court to review and evaluate the evidence on record and determine whether Verzo was illegally dismissed.

Essentially, Enchanted questions the finding of the CA that it illegally dismissed Verzo, considering that it was simply exercising its prerogative to dismiss a probationary employee for failing to meet the reasonable standards it set at the time he was hired.

Verzo, on the other hand, contends that he was a regular employee of Enchanted because he was not apprised of his probationary status at the start of his employment and was not informed of the reasonable standards for his regularization.

As a regular employee, Verzo claims that he could only be dismissed for cause and only after the twin requirements of notice and hearing had been complied with.

Probationary Employment

A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. A probationary appointment affords the employer an opportunity to observe the skill, competence and attitude of a probationer. The word probationary, as used to describe the period of employment, implies the purpose of the term or period. While the employer observes the fitness, propriety and efficiency of a probationer, to ascertain whether he is qualified for permanent employment, the probationer, at the same time, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment.[41] The concept of probationary employment was, thus, introduced for the benefit of the employer to provide him with ample time to observe and determine whether a newly hired employee has the competence, ability and values necessary to achieve his objectives.

A probationary employee, like a regular employee, enjoys security of tenure. In cases of probationary employment, however, aside from just or authorized causes of termination, under Article 281 of the Labor Code, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement.[42] In summary, a probationary employee may be terminated for any of the following: (a) a just; or (b) an authorized cause; and (c) when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.[43]

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[41] *Escorpizo v. University of Baguio*, 366 Phil. 166, 175-176 (1999).

[42] *Robinson's Galleria/Robinsons Supermarket Corporation v. Ranchez*, 655 Phil. 133, 139 (2011).

[43] *Id*.

Section 6(d), Rule I, Book VI of the Implementing Rules of the Labor Code provides that if the employer fails to inform the probationary employee of the reasonable standards on which his regularization would be based at the time of the engagement, then the said employee shall be deemed a regular employee. Thus:

> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In *Abbott Laboratories v. Alcaraz*,[44] the Court stated that when dealing with a probationary employee, the employer is made to comply with two (2) requirements: *first,* the employer must communicate the regularization standards to the probationary employee; and *second*, the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to comply with either, the employee is deemed as a regular and not a probationary employee.

An exception to the foregoing rule is when the job is self-descriptive, as in the case of maids, cooks, drivers, or messengers.[45]

In *Aberdeen Court, Inc. v. Agustin*,[46] it has been held that the rule on notifying a probationary employee of the standards of regularization should not be used to exculpate an employee who acted in a manner contrary to basic knowledge and common sense in regard to which there was no need to spell out a policy or standard to be met. In the same light, an employee's failure to perform the duties and responsibilities

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[44] G.R. No. 192571, July 23, 2013, 701 SCRA 682.

[45] *Robinson's Galleria/Robinsons Supermarket Corporation v. Ranchez, supra* note 42.

[46] 495 Phil. 706, 716-717 (2005).

which had been clearly made known to him would constitute a justifiable basis for a probationary employee's non-regularization.

In the case at bench, the evidence is clear that when Verzo was first hired by Enchanted, he was placed on a probationary status. The letter, dated August 26, 2009, clearly reflects not only the agreement of both parties as to the probationary status of the employment and its duration, but also the fact that Enchanted informed Verzo of the standards for his regularization. Thus:

August 26, 2009

MR. MIGUEL J. VERZO
B6 L15 San Lorenzo South Village
Sta. Rosa, Laguna

Enchanted Kingdom, Inc. (Company) warmly welcomes you as one of its cast members effective August 19, 2009 under the terms and conditions set forth below:

1. The designation of your position in the Company shall be Section Head-Mechanical & Instrumentation Maintenance and you shall be reporting directly to the Head for Maintenance Mr. Rizalito M. Velesrubio. Your compensation package shall be as follows:

COMPENSATION:	Monthly gross salary of ₱18,614.54 computed on a 13-month basis (annual gross compensation of ₱241,985.12), payable on the 15th and last day of every month.
BENEFITS:	Aside from the Statutory Benefits, you will be entitled to the following benefits immediately upon hiring:
xxx	xxx xxx
	In addition to the above, you will be entitled to the following benefits, **once regularized:**

x x x x x x x x x

2. You will be on a probationary status from August 19, 2009 to February 18, 2010.

3. As Section Head for Mechanical & Instrumentation Maintenance, **you shall be responsible for mechanical and structural system assessments and inspection to evaluate conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards.** Please see attach Job Description for the details of your responsibilities.

x x x x x x x x x

10. It is agreed and understood that there shall be no verbal agreement or understanding between the parties hereto affecting this contract and that no alteration or variation of the terms herein provided shall be binding upon either party unless in writing and signed by both parties.

x x x x x x x x x

Very truly yours,

ENCHANTED KINGDOM, INC.

[Sgd.]

MA. CRISTINA O. DE LEON

Head – HRMAS

I hereby acknowledge receipt of the original of this letter and agree to all the terms and conditions stated herein.

[Sgd.] September 2, 2009

MIGUEL J. VERZO

[Emphases and Underscoring Supplied]

Clearly from the above, Enchanted informed Verzo that he was being placed on probation. Aside from the probationary nature of his employment, the agreement of the parties specifically showed: the duration of such status; the benefits to which he was entitled once regularized; and most importantly, the standard with which he must comply in order to be regularized. To deserve regularization, he must be able to conduct "mechanical and

structural system assessments," as well as inspect and evaluate the "conditions, operations and maintenance requirements of rides, facilities and buildings to ensure compliance with applicable codes, regulations and standards." A detailed enumeration of his specific duties accompanied this letter of employment to ensure that he was made aware and informed of his duties and responsibilities.

Verzo makes much noise of the fact that the letter was not served upon him immediately at the very start of his employment on August 19, 2009. Suffice it to state that Enchanted was able to substantially comply with the requirement of the law in apprising him of the standards for his regularization. Verily, the purpose of the law in requiring that an employee be notified of the standards for his regularization during his probationary employment is to simply afford him due process, so that the employee will be aware that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors.[47]

Moreover, while it may be argued that ideally employers should immediately inform a probationary employee of the standards for his regularization from day one, strict compliance thereof is not required. The true test of compliance with the requirements of the law is, of course, one of reasonableness. As long as the probationary employee is given a reasonable time and opportunity to be made fully aware of what is expected of him during the early phases of the probationary period, the requirement of the law has been satisfied.

At any rate, a total of only fourteen (14) days had just lapsed when Verzo officially received the letter containing what he already knew – that he was still a probationary employee. It is ludicrous to think that Enchanted conjured this up as an afterthought to justify his termination before probationary period would be over.

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[47] *Philippine Daily Inquirer v. Magtibay*, 555 Phil. 326, 336 (2007).

At any rate, contrary to the findings of the CA, the Court finds that Enchanted had basis when it decided not to continue with the services of Verzo as SH-MIM.

First, while the CA leaned heavily on the fact that the performance evaluation given by Enchanted did not specify the instances of Verzo's unfitness, it should be pointed out that Verzo himself admitted that the performance evaluation he received on February 3, 2010 was accompanied by the respective reports of Schoefield, Montemayor and Velesrubio.[48] As earlier stated, these reports detailed the reasons why Verzo failed to meet the standards set by Enchanted and compromised the safety of its patrons.

Second, granting that Verzo was not informed of his specific duties and responsibilities, nonetheless, his dismissal was valid because he failed to adhere to the dictates of common sense which required that he act in accordance with the necessary work ethics and basic skills required by his position as SH-MIM *and* by his profession as licensed engineer.

Third, while the CA considered the fact that Velesrubio advised Verzo to resign because he was not going to be regularized even before his performance appraisal, the Court finds that such should not be taken as an indication of bad faith on the part of Enchanted. For this Court, the same could only be Velesrubio's own opinion of Verzo, because he was the one supervising his performance. Whether Enchanted had decided to discontinue Verzo's employment cannot, at that point, be said to have been a foregone conclusion.

Contrary to Verzo's theory that Velesrubio conspired with Enchanted to oust him from his position, the Court gives credence to the reports made by Verzo's very own colleagues, Schoefield and Montemayor. As against Verzo's self-serving theory, Schoefiled and Montemayor clearly detailed the reasons why Verzo lacked the required competence of a SH-MIM. The

[48] *Rollo*, p. 867.

reasons in their reports were numerous and spelled out with particulars, unlikely products of fabrication.

If only to stress the point, Schoefield's report cited an incident where, Verzo, after being instructed to check the water level of one of the pools, reported back that the pool had sufficient water for its operation. It was found out the following day that one of Enchanted's patrons got injured due to the pool's low water level. Verzo also mishandled the operation of the park's submersible pump causing sludge to overflow up to the entrance of the parking area. On more than one occasion, Verzo failed to take action to replace equipment needed for the proper operation of the park's facilities.

These observations were corroborated by Montemayor, who recounted that he was slow to make decisions, was often seen using company computers for personal interests, and was often late to report for work. With these, it is clear that Velesrubio was correct in not recommending the regularization of Verzo because he evidently lacked the basic standard of competence, prudence and due diligence.

On punctuality, in the recent case of *Carvajal v. Luzon Development Bank*,[49] the Court has emphasized that:

> Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the bank.

Notice and Hearing Not Required

Whether or not Verzo was afforded the opportunity to explain his side is of no consequence. Under Section 2 Rule I, Book VI of the Implementing Rules of the Labor Code:

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[49] 692 Phil. 273 (2012).

Section 2. Security of tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

(b) The foregoing shall also apply in cases of probationary employment; Provided however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

x x x x x x x x x

If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, **it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination**.

[Emphasis Supplied]

In *Philippine Daily Inquirer v. Magtibay*,[50] the Court stressed that notice and hearing are not required in case a probationary employee is not retained for failure to comply with the reasonable standards set by his employer. Thus:

Unlike under the first ground for the valid termination of probationary employment which is for cause, **the second ground does not require notice and hearing**. Due process of law for this second ground consists of making the reasonable standards expected of the employee **during his probationary period** known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. **It is in apprising him of the standards against which his performance shall**

[50] *Supra* note 47.

be continuously assessed where due process regarding the second ground lies, and not in notice and hearing as in the case of the first ground.[51]

[Emphases and Underscoring Supplied]

Considering that Verzo failed to meet the reasonable standards set out by it, Enchanted cannot be compelled to regularize Verzo. Enchanted, being engaged in the business of providing entertainment and amusement with mechanical rides and facilities, is not duty-bound to retain an employee who is clearly unfit. With his attitude, inefficiency and incompetency, it is most likely that an accident would occur for which Enchanted, an amusement enterprise which caters mostly to children, could be sued for damages.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play.[52]

WHEREFORE, the March 26, 2013 Decision and the October 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 118075 are hereby **REVERSED** and **SET ASIDE**.

The complaint filed by respondent Miguel J. Verzo for illegal dismissal, damages and attorney's fees is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[51] *Id.* at 336.

[52] *Mercury Drug Corporation v. National Labor Relations Commission*, G.R. No. 75662, September 15, 1989, 177 SCRA 580, 586-587.

[*] Per Special Order No. 2301, dated December 1, 2015.

FIRST DIVISION

[G.R. No. 210215. December 9, 2015]

ROGELIO S. NOLASCO, NICANORA N. GUEVARA, LEONARDA N. ELPEDES, HEIRS OF ARNULFO S. NOLASCO, and REMEDIOS M. NOLASCO, represented by ELENITA M. NOLASCO, *petitioners, vs.* **CELERINO S. CUERPO, JOSELITO ENCABO, JOSEPH ASCUTIA, and DOMILO LUCENARIO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RIGHT OF RESCISSION; ONLY UPON SUBSTANTIAL BREACH OF OBLIGATION.—** In reciprocal obligations, either party may rescind – or more appropriately, resolve – the contract upon the other party's substantial breach of the obligation/s he had assumed thereunder. This is expressly provided for in Article 1191 of the Civil Code x x x "More accurately referred to as resolution, the right of rescission under Article 1191 is predicated on a breach of faith that violates the reciprocity between the parties to the contract. This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is 'unjust that a party be held bound to fulfill his promises when the other violates his.'" Note that the rescission (or resolution) of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement. Ultimately, the question of whether a breach of contract is substantial depends upon the attending circumstances.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPELLATE COURT CANNOT GRANT A PRAYER OF RELIEF NOT PRAYED NOR ARGUED FOR IN THE REGIONAL TRIAL COURT (RTC).—** [T]he Court cannot grant petitioners' prayer in the instant petition to order the cancellation of the subject contract and the forfeiture of the amounts already paid by respondents on account of the latter's failure to pay its monthly

amortizations, simply because in their Answer with Compulsory Counterclaim and Motion for Summary Judgment filed before the RTC, petitioners neither prayed for this specific relief nor argued that they were entitled to the same. Worse, petitioners were declared "as in default" for failure to file the required pre-trial brief and, thus, failed to present any evidence in support of their defense. It is settled that "[w]hen a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

APPEARANCES OF COUNSEL

Napoleon I. Callos for petitioners.
Elzon C. Legaspi 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 June 17, 2013 and the Resolution[3] dated November 19, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 95353, which affirmed *in toto* the Decision[4] dated March 1, 2010 of the Regional Trial Court of Quezon City, Branch 81 (RTC) in Civil Case No. Q-08-63860 ordering the rescission of the Contract to Sell executed by herein parties and the return of the amounts already paid by respondents Celerino S. Cuerpo, Joselito Encabo, Joseph Ascutia, and Domilo Lucenario (respondents) to petitioners Rogelio S. Nolasco, Nicanora N.

[1] *Rollo,* pp. 17-54.

[2] *Id.* at 55-62. Penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro concurring.

[3] *Id.* at 63-65.

[4] *Id.* at 122-128. Penned by Presiding Judge Ma. Theresa L. De La Torre-Yadao.

Guevara, Leonarda N. Elpedes, Heirs of Arnulfo S. Nolasco, and Remedios M. Nolasco, represented by Elenita M. Nolasco (petitioners), as well as the remaining post-dated checks issued by respondent Celerino S. Cuerpo representing the remaining monthly amortizations, all in connection with the said contract.

The Facts

On July 22, 2008, petitioners and respondents entered into a Contract to Sell[5] (subject contract) over a 165,775-square meter parcel of land located in Barangay San Isidro, Rodriguez, Rizal covered by Original Certificate of Title No. 152 (subject land).[6] The subject contract provides, *inter alia,* that: (*a*) the consideration for the sale is ₱33,155,000.00 payable as follows: down payment in the amount of ₱l 1,604,250.00 inclusive of the amount of ₱2,000,000.00 previously paid by respondents as earnest money/reservation fee, and the remaining balance of ₱21,550,750.00 payable in 36 monthly installments, each in the amount of ₱598,632.00 through post-dated checks; (*b*) in case any of the checks is dishonored, the amounts already paid shall be forfeited in petitioners' favor, and the latter shall be entitled to cancel the subject contract without judicial recourse in addition to other appropriate legal action; (*c*) respondents are not entitled to possess the subject land until full payment of the purchase price; (*d*) petitioners shall tranfer the title over the subject land from a certain Edilberta N. Santos to petitioners' names, and, should they fail to do so, respondents may cause the said transfer and charge the costs incurred against the monthly amortizations; and (*e*) upon full payment of the purchase price, petitioners shall transfer title over the subject land to respondents.[7] However, respondents sent petitioners a letter[8] dated November 7, 2008 seeking to rescind the subject contract on the ground of financial difficulties in complying with the same. They also

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[5] *Id*. at 81-85.

[6] See *id*. at 56 and 78.

[7] See *id*. at 82-83.

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

sought the return of the amount of ₱12,202,882.00 they had paid to petitioners.[9] As their letter went unheeded, respondents filed the instant complaint[10] for rescission before the RTC.[11]

In their defense,[12] petitioners countered that respondents' act is a unilateral cancellation of the subject contract as the former did not consent to it. Moreover, the ground of financial difficulties is not among the grounds provided by law to effect a valid rescission.[13]

In view of petitioners' failure to file the required pre-trial brief, they were declared "as in default" and, consequently, respondents were allowed to present their evidence *ex-parte*.[14]

The RTC Ruling

In a Decision[15] dated March 1, 2010, the RTC ruled in favor of respondents and, accordingly, ordered: *(a)* the rescission of the subject contract; and (*b)* the return of the amounts already paid by respondents to petitioners, as well as the remaining post-dated checks issued by respondent Celerino S. Cuerpo representing the remaining monthly amortizations.[16]

It found petitioners to have substantially breached paragraph 7 of the subject contract which states that "[t]he [petitioners] shall, within ninety (90) days from the signing of [the subject contract] cause the completion of the transfer of registration of title of the property subject of [the said contract], from Edilberta

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[9] See *id*.

[10] Dated November 21. 2008. *Id*. at 66-77.

[11] See *id*. at 57 and 69.

[12] See Answer with Compulsory Counterclaim and Motion for Summary Judgment dated June 11, 2009; *id*. at 95-107.

[13] *Id*. at 95-96.

[14] *Id*. at 57.

[15] *Id*. at 122-128.

[16] *Id*. at 127-128.

N. Santos to their names, at [petitioners'] own expense."[17] As such, respondents were entitled to rescission under Article 1191 of the Civil Code.[18]

Dissatisfied, petitioners appealed[19] to the CA.

The CA Ruling

In a Decision[20] dated June 17, 2013, the CA affirmed the RTC ruling. It agreed with the RTC that petitioners substantially breached paragraph 7 of the subject contract when they did not effect the transfer of the subject land from Edilberta N. Santos to petitioners' names within ninety (90) days from the execution of said contract, thus, entitling respondents to rescind the same. In this relation, the CA held that under the present circumstances, the forfeiture of the payments already made by respondents to petitioners is clearly improper and unwarranted.[21]

Aggrieved, petitioners moved for reconsideration,[22] which was denied in a Resolution[23] dated November 19, 2013; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed the rescission of the subject contract and the return of the amounts already paid by respondents to petitioners, as well as the remaining post-dated checks issued by respondent Celerino S. Cuerpo representing the remaining monthly amortizations.

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[17] See *id*. at 126.

[18] *Id*. at 127.

[19] See Notice of Appeal dated April 23, 2010; *id*. at 130-131.

[20] *Id*. at 55-62.

[21] See *id*. at 59-61.

[22] Not attached to the *rollo*.

[23] *Rollo,* pp. 63-65.

The Court's Ruling

The petition is partially meritorious.

In reciprocal obligations, either party may rescind – or more appropriately, resolve – the contract upon the other party's substantial breach of the obligation/s he had assumed thereunder.[24] This is expressly provided for in Article 1191 of the Civil Code which states:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

"More accurately referred to as resolution, the right of rescission under Article 1191 is predicated on a breach of faith that violates the reciprocity between the parties to the contract. This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is 'unjust that a party be held bound to fulfill his promises when the other violates his.'"[25] Note that the rescission (or resolution) of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.[26]

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[24] *Golden Valley Exploration, Inc. v. Pinkian Mining Company,* G.R. No. 190080, June 11, 2014, 726 SCRA 259, 265.

[25] *Id.* at 266; citations omitted.

[26] *EDS Manufacturing, Inc. v. Healthcheck International, Inc.,* G.R. No. 162802, October 9, 2013, 707 SCRA 133, 141.

Ultimately, the question of whether a breach of contract is substantial depends upon the attending circumstances.[27]

In the instant case, both the RTC and the CA held that petitioners were in substantial breach of paragraph 7 of the subject contract as they did not cause the transfer of the property to their names from one Edilberta N. Santos within 90 days from the execution of said contract.[28]

The courts *a quo* are mistaken.

Paragraph 7 of the subject contract state in full:

> 7. [Petitioners] shall, within ninety (90) days from the signing of [the subject contract], cause the completion of the transfer of registration of title of the property subject of [the subject contract], from Edilberta N. Santos to their names, at [petitioners'] own expense. **Failure on the part of [petitioners] to undertake the foregoing within the prescribed period shall automatically authorize [respondents] to undertake the same in behalf of [petitioners] and charge the costs incidental to the monthly amortizations upon due date.** (Emphasis and underscoring supplied)

A plain reading of paragraph 7 of the subject contract reveals that while the RTC and the CA were indeed correct in finding that petitioners failed to perform their obligation to effect the transfer of the title to the subject land from one Edilberta N. Santos to their names within the prescribed period, said courts erred in concluding that such failure constituted a substantial breach that would entitle respondents to rescind (or resolve) the subject contract. To reiterate, for a contracting party to be entitled to rescission (or resolution) in accordance with Article 1191 of the Civil Code, the other contracting party must be in substantial breach of the terms and conditions of their contract. A substantial breach of a contract, unlike slight and casual breaches thereof, is

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[27] *Maglasang v. Northwestern University, Inc.,* G.R. No. 188986, March 20, 2013, 694 SCRA 128, 136.

[28] See *rollo,* pp. 59-61 and 126-127.

a fundamental breach that defeats the object of the parties in entering into an agreement.[29] Here, it cannot be said that petitioners' failure to undertake their obligation under paragraph 7 defeats the object of the parties in entering into the subject contract, considering that the same paragraph provides respondents contractual recourse in the event of petitioners' non-performance of the aforesaid obligation, that is, to cause such transfer themselves in behalf and at the expense of petitioners.

Indubitably, there is no substantial breach of paragraph 7 on the part of petitioners that would necessitate a rescission (or resolution) of the subject contract. As such, a reversal of the rulings of the RTC and the CA is in order.

The foregoing notwithstanding, the Court cannot grant petitioners' prayer in the instant petition to order the cancellation of the subject contract and the forfeiture of the amounts already paid by respondents on account of the latter's failure to pay its monthly amortizations,[30] simply because in their Answer with Compulsory Counterclaim and Motion for Summary Judgment[31] filed before the RTC, petitioners neither prayed for this specific relief nor argued that they were entitled to the same. Worse, petitioners were declared "as in default" for failure to file the required pre-trial brief and, thus, failed to present any evidence in support of their defense.[32] It is settled that "[w]hen a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair

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[29] See *Maglasang v. Northwestern University, Inc., supra* note 27, at 135-136; citations omitted.

[30] See *rollo,* pp. 33 and 45-51.

[31] *Id*. at 92-107.

[32] *Id*. at 57.

to the adverse party."[33] The Court's pronouncement in *Peña v. Spouses Tolentino*[34] is instructive on this matter, to wit:

> Indeed, the settled rule in this jurisdiction, according to *Mon v. Court of Appeals,* is that a party cannot change his theory of the case or his cause of action on appeal. This rule affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. **The legal theory under which the controversy was *heard* and *decided* in the trial court should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This would be offensive to the basic rules of fair play, justice, and due process.**[35] (Emphasis and underscoring supplied)

WHEREFORE, the petition is **PARTIALLY GRANTED.** Accordingly, the Decision dated June 17, 2013 and the Resolution dated November 19, 2013 of the Court of Appeals in CA-G.R. CV No. 95353 are hereby **REVERSED** and **SET ASIDE.** The Contract to Sell executed by the parties on July 22, 2008 remains **VALID** and **SUBSISTING**.

SO ORDERED.

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

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[33] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* 535 Phil. 481, 490 (2006), citing *Carantes v. CA,* 167 Phil. 232, 240 (1977).

[34] 657 Phil. 312 (2011).

[35] *Id*. at 328-329; citations omitted.

FIRST DIVISION

[G.R. No. 210855. December 9, 2015]

ROLANDO S. ABADILLA, JR., *petitioner, vs.* **SPOUSES BONIFACIO P. OBRERO and BERNABELA N. OBRERO, and JUDITH OBRERO-TIMBRESA,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER REMEDY FOR A FINAL ORDER THAT COMPLETELY DISPOSES OF THE CASE.—** An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. A final order is appealable, in accordance with the final judgment rule enunciated in Section 1, Rule 41 of the Rules of Court (Rules) declaring that "[a]n appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable."

2. **ID.; ID.; ID.; WHERE PETITION FOR *CERTIORARI* WAS ERRONEOUSLY FILED WAY BEYOND THE REGLEMENTARY PERIOD WITHIN WHICH TO PERFECT AN ORDINARY APPEAL, SUBJECT DECISION BECOMES FINAL AND DOCTRINE OF IMMUTABILITY OF JUDGMENTS SETS IN.—** [R]espondents **erroneously filed a petition for *certiorari*** before the CA way **beyond the reglementary period within which to perfect an ordinary appeal**. Given the improper remedy taken, the order of dismissal rendered by the RTC has, thus, become final and immutable and, therefore, can no longer be altered or modified in any respect. The doctrine of immutability of judgments bars courts from modifying decisions that had already attained finality, even if the purpose of the modification is to correct errors of fact or law. As the only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.

3. ID.; IMPORTANCE OF PROCEDURAL RULES, HIGHLIGHTED.— It should be stressed that procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. Procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality.

APPEARANCES OF COUNSEL

Hector P. Corpus for petitioner.
Carpio & Bello Law Offices 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 August 31, 2012 and the Resolution[3] dated January 7, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 116714, which annulled and set aside the Orders dated March 1, 2010[4] and August 11, 2010,[5] respectively,

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[1] *Rollo*, pp. 9-38.

[2] *Id.* at 43-57. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

[3] *Id.* at 59-61.

[4] *Id.* at 103-105. Penned by Presiding Judge Francisco R.D. Quilala.

[5] *Id.* at 111.

of the Regional Trial Court of Laoag City, Branch 14 (RTC) in Civil Case No. 14371-14, dismissing with prejudice the complaint for injunction and damages with prayer for writ of preliminary injunction filed by respondents-spouses Bonifacio P. Obrero and Bernabela N. Obrero (Sps. Obrero), and Judith Obrero-Timbresa (Judith; collectively, respondents).

The Facts

The subject matter of the present controversy is a beachfront property with an area of 7,899 square meters, more or less, located in Barangay 37, Calayab, Laoag City (subject property). Respondents, together with Airways Development Corporation (Airways), were declared[6] as the registered owners thereof and issued Original Certificate of Title (OCT) No. 460-L on September 20, 1999.[7] In a subsequent action for partition, however, together with other related cases, the subject property was titled in respondents' names under Transfer Certificate of Title (TCT) No. T-38422 where the latter constructed cottages and other structures.[8]

On September 22, 2007, claiming that the subject property was part of a 13-hectare land previously sold to his father, petitioner Rolando S. Abadilla, Jr. (Abadilla, Jr.) forcibly entered the subject property with the assistance of armed men.[9] Thereafter, Abadilla, Jr.'s men blocked the way to the apartelle erected on the subject property and demolished the other structures found therein.[10] This prompted respondents to file on October 1, 2007 a complaint[11] for ejectment (forcible entry) with an application for the issuance of a writ of preliminary

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[6] By virtue of a Decision of the RTC dated December 3, 1998 (not attached to the *rollo*). See *id.* at 103 and 114.

[7] *Id.* at 44-45.

[8] See *id.* at 114-115.

[9] *Id.* at 45.

[10] *Id.*

[11] Dated September 28, 2007. *Id.* at 95-100.

injunction against Abadilla, Jr. before the Municipal Trial Court in Cities in Laoag City (MTCC), docketed as Civil Case No. 3329 (*ejectment case*). Unfortunately, respondents' application for the issuance of a writ of preliminary injunction was later on deemed abandoned.[12]

On July 18, 2008, respondents filed the present complaint[13] for injunction and damages with prayer for the issuance of a writ of preliminary injunction against Abadilla, Jr. before the RTC, docketed as Civil Case No. 14371-14 (*injunction case*), praying that the latter be enjoined from inflicting further damage on their persons and the subject property and that actual, moral, and exemplary damages, as well as attorney's fees and other costs, be awarded to them.[14]

In his defense,[15] Abadilla, Jr. claimed, among others, that respondents were guilty of forum-shopping, contending that respondents were seeking the same nature of reliefs from the MTCC and the RTC arising from the same set of facts which resulted in their dispossession of the subject property.[16]

On the other hand, respondents denied having committed forum-shopping, claiming no identity of subject matter between the *ejectment case* and the *injunction case*. They asseverated that the *ejectment case* was filed to "indicate their prior possession of the subject property," while the *injunction case* was instituted "to seek the protection of the court and the grant of injunctive relief to prevent [Abadilla, Jr.] from inflicting further damage on their persons and property, as well as damages."[17]

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[12] See *id*. at 176. See also *id*. at 46 and 104.

[13] *Id.* at 66-77.

[14] *Id*. at 47.

[15] See Answer (with Compulsory Counterclaims & Opposition to the Application for Writ of Preliminary Injunction) dated August 3, 2008; *id*. at 78-94.

[16] See *id*. at 86-87. See also *id*. at 48-49 and 103.

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

The RTC Ruling

In an Order[18] dated March 1, 2010, the RTC dismissed the *injunction case* with prejudice on the ground of forum-shopping. In so ruling, the RTC found that the complaints in the *ejectment case* and the *injunction case*: (*a*) involved the same facts and circumstances, raised identical causes of action, subject matter and issues; (*b*) prayed that a writ of preliminary injunction be issued directing Abadilla, Jr. to cease from committing further acts of dispossession and to vacate the subject property; and (*c*) prayed for the award of actual, moral, and exemplary damages and attorney's fees.[19] The RTC concluded that since the MTCC in the *ejectment case* had deemed respondents to have abandoned their prayer for the issuance of a writ of preliminary injunction, the filing of the *injunction case*, which basically prayed for the same relief constituted forum-shopping.[20]

Respondents moved for reconsideration,[21] but was denied in an Order[22] dated August 11, 2010. Aggrieved, respondents elevated the case to the CA *via* a petition for *certiorari*[23] instead of filing a notice of appeal.

The CA Ruling

In a Decision[24] dated August 31, 2012, the CA granted respondents' *certiorari* petition, and annulled and set aside the March 1, 2010 and August 11, 2010 RTC Orders dismissing with prejudice the *injunction case*. It held that the cause of action in the *injunction case* stemmed not from Abadilla, Jr.'s occupation or possession of the subject property, but from the

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

[19] *Id.* at 104.

[20] *Id.* at 105.

[21] See motion for reconsideration dated April 5, 2010; *id.* at 106-110.

[22] *Id.* at 111.

[23] Filed on November 4, 2010. *Id.* at 112-129.

[24] *Id.* at 43-57.

demolition of the structures constructed by respondents, as well as the damages brought about by Abadilla, Jr.'s acts of intimidating respondents and destroying their personal properties.[25] Contrary to Abadilla, Jr.'s claim, the *injunction case* did not ask for recovery of possession; instead, it prayed that he be enjoined from destroying the structures erected by respondents, and that the latter be compensated for the damages they have sustained.[26] As such, the separate case for injunction and damages was proper, and respondents cannot be said to have committed forum-shopping.

Moreover, the CA took cognizance of the *certiorari* petition, notwithstanding that the appropriate remedy to challenge the dismissal of the complaint for injunction and damages with prejudice is an appeal, citing the need to relax the rules to prevent irreparable damage and injury to the respondents, as held in *Francisco Motors Corporation v. CA*.[27]

Abadilla, Jr.'s motion for reconsideration[28] was denied in a Resolution[29] dated January 7, 2014; hence, this petition.

The Issue Before the Court

The crucial issue for the Court's resolution is whether or not the CA erred in taking cognizance of the petition for *certiorari*, notwithstanding the wrong mode of appeal taken to assail the order of dismissal of the complaint for injunction and damages filed by respondents.

The Court's Ruling

The petition is meritorious.

An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it

[25] *Id*. at 55.

[26] *Id*.

[27] *Id*. at 55-56. See G.R. Nos. 117622-23, October 23, 2006, 505 SCRA 8.

[28] Not attached to the *rollo*.

[29] *Rollo*, pp. 59-61.

leaves nothing more to be done by the lower court.[30] A final order is appealable, in accordance with the final judgment rule enunciated in Section 1,[31] Rule 41 of the Rules of Court (Rules) declaring that "[a]n appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable."[32]

In light of the foregoing rule, respondents' remedy from the March 1, 2010 and August 11, 2010 RTC Orders, which dismissed with prejudice the *injunction case,* was therefore **an ordinary appeal**. To perfect the same, respondents should have filed a notice of appeal within fifteen (15) days from

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[30] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 784 (2004).

[31] Section l. *Subject of appeal.* — **An appeal may be taken from a judgment or final order that completely disposes of the case,** or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a petition for relief or any similar motion seeking relief from judgment;

(b) An interlocutory order;

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65 (As amended by A.M. No. 07-7-12-SC, December 1, 2007.) Emphasis supplied.

[32] *Jose v. Javellana*, 680 Phil. 10, 19-20 (2012).

notice of the judgment or final order appealed from.[33] As the records[34] in this case reveal that they received a copy of the Order dated **August 11, 2010** denying their motion for reconsideration on August 31, 2010, they had only until **September 15, 2010** within which to file a notice of appeal.

However, instead of doing so, respondents **erroneously filed a petition for *certiorari*** before the CA on **October 30, 2010,** or way **beyond the reglementary period within which to perfect an ordinary appeal.** Given the improper remedy taken, the order of dismissal rendered by the RTC has, thus, become final and immutable and, therefore, can no longer be altered or modified in any respect. The doctrine of immutability of judgments bars courts from modifying decisions that had already attained finality, even if the purpose of the modification is to correct errors of fact or law.[35] As the only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments,[36] none of which are obtaining in this case, and considering further that there lies no compelling reason to relax the rules of procedure, the CA erred when it took cognizance of respondents' *certiorari* petition and rendered judgment thereon.

It should be stressed that procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor

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[33] See Section 3, Rule 41, Rules of Court.

[34] See *certiorari* petition, *rollo*, p. 113.

[35] *Gadrinab v. Salamanca*, G.R. No. 194560, June 11, 2014, 726 SCRA 315, 328-329.

[36] *Gonzales v. Solid Cement Corporation*, G.R. No. 198423, October 23, 2012, 684 SCRA 344, 351.

may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. Procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality.[37]

The Court notes that the *ejectment case* before the MTCC has already been elevated to the Court, docketed as G.R. No. 199448,[38] which, in a Decision dated November 12, 2014, was resolved by upholding respondents' right of possession over the subject property on the strength of the title in their names. As such, they were justified in committing acts of possession over the said property, to the exclusion of Abadilla, Jr., notwithstanding the dismissal of the *injunction case* on technicality.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 31, 2012 and the Resolution dated January 7, 2014 rendered by the Court of Appeals in CA-G.R. SP No. 116714 are hereby **REVERSED** and **SET ASIDE**. The Orders dated March 1, 2010 and August 11, 2010 of the Regional Trial Court of Laoag City, Branch 14 in Civil Case No. 14371-14, which had long attained finality, are **REINSTATED**.

SO ORDERED.

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

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[37] *Bank of the Philippine Islands v. CA,* 646 Phil. 617, 627 (2010), citing *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, 574 Phil. 20, 38 (2008).

[38] Entitled "*Rolando S. Abadilla, Jr. v. Spouses Bonifacio P. Obrero and Bernabela N. Obrero*".

FIRST DIVISION

[G.R. No. 211543. December 9, 2015]

DOMINGO G. PANGANIBAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; MALVERSATION; ELEMENTS.—** Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property. For a prosecution of the crime to prosper, concurrence of the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

2. **ID.; ID.; ID.; CUSTODY OF THE PUBLIC FUNDS OR PROPERTY BY REASON OF HIS OFFICIAL DUTIES; ELUCIDATED.—** To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. x x x Therefore, petitioner could not have [been guilty of malversation.]

3. **ID.; ID.; GOOD FAITH MANIFESTED BY RESTITUTION OF AMOUNT INVOLVED IS A VALID DEFENSE TO NEGATE CRIMINAL INTENT.—** [E]ven granting that it was malversation which petitioner was alleged to have committed, it has been

ruled that good faith is a valid defense in a prosecution for malversation of public funds as it would negate criminal intent on the part of the accused. Petitioner's full liquidation of his cash advance by means of an arrangement allowed by the COA ultimately translated into the good faith he interposed as a defense.

4. CRIMINAL LAW; PENALTIES; INDETERMINATE SENTENCE LAW; MINIMUM AND MAXIMUM PENALTIES TO BE IMPOSED SHOULD BE DETERMINATE.— On the theory that he was guilty as charged, petitioner was imposed the "indeterminate penalty of imprisonment [for] ten (10) years and one day to twelve (12) years, five (5) months and ten (10) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal*, as maximum." While the *Indeterminate Sentence Law* mandates the imposition of an indeterminate sentence with minimum and maximum periods for the benefit of the accused, it goes without saying that the minimum and maximum penalties to be imposed should, themselves, be determinate.

APPEARANCES OF COUNSEL

Edgardo Carlo L. Vistan II for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] of the 18 November 2013 Decision[2] rendered by the Fifth Division of public respondent Sandiganbayan in Criminal Case No. SB-08-CRM-0031, entitled *People of the Philippines v. Domingo G. Panganiban*, the decretal portion of which states:

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[1] *Rollo*, pp. 53-104.

[2] *Id*. at 106-130; penned by Associate Justice Amparo M. Cabotaje-Tang with Associate Justices Roland B. Jurado and Alexander G. Gesmundo, concurring.

WHEREFORE, premises considered, judgment is hereby rendered finding accused DOMINGO G. PANGANIBAN GUILTY beyond reasonable doubt of malversation of public funds, and considering the mitigating circumstance of restitution of the amount malversed, he is hereby sentenced to suffer the indeterminate penalty of imprisonment [of] ten (10) years and one (1) day to twelve (12) years, five (5) months and ten (10) days of *prision mayor,* as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal,* as maximum.

Accused Domingo G. Panganiban is further ordered to pay a fine equal to the amount malversed or ₱463,931.78, and, to suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.[3]

The following factual and procedural antecedents may be gleaned from the records:

Having already previously served as mayor of the Municipality of Sta. Cruz, Laguna from 2004 to 2007, petitioner Domingo G. Panganiban was once again elected to said position in the May 2013 elections. Sometime in May 2006 or during his previous term, petitioner obtained a cash advance in the sum of Php500,000.00 from the municipality, ostensibly for the purpose of defraying the projected expenses[4] of a planned official travel to the City of Onkaparinga, Adelaide, South Australia, to study and research said city's sustainable environmental projects.[5] The availment of the cash advance is evidenced by, among others, the following documents: (a) Disbursement Voucher (DV) No. 05-372 dated 17 May 2006 signed by Caridad P. Lorenzo (Lorenzo), the Municipal Accountant; (b) an Obligation Slip dated 16 May 2006; (c) a copy of the 17 May 2006 check in the sum of Php500,000.00 prepared by Ronaldo O. Valles (Valles), the Officer-in-Charge of the Municipal Treasurer's Office; and (d) a Promissory Note executed by petitioner.[6] Although scheduled for 9 June to 9 July 2006, the

[3] *Id*. at 129.

[4] Records, Vol. I, p. 221; Exhibit "A".

[5] Exhibits "A-3", "A-4", "A-5", "A-8", and "A-9", folder of exhibits.

[6] Exhibits "A", "A-1", "A-2" and "A-6", *id*.

official travel of petitioner did not push through for undisclosed reasons.[7]

His attention called to the unliquidated cash advance, petitioner instructed Lorenzo to withhold his salaries which the latter started doing in July 2006 and recorded and posted the payments in the journal and subsidiary ledger, respectively.[8] Assigned in 2006 as audit team leader for the local government units of the Province of Laguna, on the other hand, Commission on Audit (COA) State Auditor Rebecca C. Ciriaco (Ciriaco) examined the financial records of the municipality of Sta. Cruz and discovered that the aforesaid cash advance had not yet been liquidated. In addition to submitting her reports in accordance with COA regulations, Ciriaco consequently served a letter dated 15 August 2006, demanding petitioner's liquidation of the cash advance. On the basis of the documents on hand, however, Ciriaco noted that petitioner had an unliquidated cash advance of Php463,931.78 as of 31 August 2006, a fact she reflected in the quarterly report she submitted to the COA Regional Cluster Director.[9]

As a consequence, an investigation of the non-liquidation of the cash advance was subsequently conducted by the Office of the Deputy Ombudsman for Luzon. During the pendency thereof, petitioner's salary deductions continued such that, by the expiration of his term in June 2007, the remaining unliquidated amount was reduced to Php256,318.45.[10] Prior to her assignment to other units, Ciriaco submitted a report stating that, as of 30 September 2007, said latter sum remained unliquidated from the time the cash advance was granted on 17 May 2006.[11] Assigned to the municipality in October 2007, on the other hand State Auditor Augusto Franco Tria (Tria) came across said outstanding cash advance while preparing his quarterly report and, not receiving the records from Lorenzo, wrote a demand letter dated 10 October 2007 to

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[7] TSN, 20 October 2009, pp. 13-14.

[8] TSN, 15 September 2010, pp. 17-20.

[9] Exhibits "C-3", and "C-3-A", folder of exhibits.

[10] Exhibits "2' and "2-A", *id*.

[11] Exhibit "E", *id*.

petitioner.[12] In an explanation dated 16 October 2007, the latter apprised Tria of the arrangement to have the cash advance liquidated by means of salary deductions.[13]

On 9 November 2007, petitioner was issued a certification signed by, among others, Lorenzo and Valles, to the effect that the unliquidated balance of the subject cash advance will be deducted from his terminal leave pay.[14] The record shows that, on 19 November 2007, the Office of the Deputy Ombudsman for Luzon issued a resolution, finding probable cause to charge petitioner with the crime of malversation of public funds. Although an information charging him for malversation of the full sum of Php500,000.00 was subsequently filed and docketed as Criminal Case No. SB-08-CRM-0031 before public respondent,[15] petitioner paid the unliquidated balance by causing the same to be deducted from his terminal leave pay. The payment is evidenced by DV No. 100-2007-11-1152 dated 22 November 2007 which shows that the sum of Php256,318.45 was deducted from his terminal leave pay of Php359,947.98.[16] When the COA Regional Office

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[12] Exhibit "7", *id*.

[13] Exhibit "8", *id*.

[14] Exhibit "5", "5-A" and "5-A-2", *id*.

[15] Records, Vol. I, p. 1.
The accusative portion of the Information reads as follows:

> That on May 17, 2006, or sometime prior or subsequent thereto, in Santa Cruz, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Domingo G. Panganiban, a public officer, being then the Municipal Mayor of Sta. Cruz, Laguna and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, obtained cash advances in the total amount of Php500,000.00 from the Municipal Treasury of Sta. Cruz, Laguna to finance his projected travel to Adelaide, South Australia but said accused once in possession of said amount of money did not undertake his official travel and from complying with his obligation did then and there willfully, unlawfully and feloniously take, misappropriate and convert to his own personal use and benefit the said amount of Php500,000.00, to the damage and prejudice of the government in the aforestated amount.
>
> CONTRARY TO LAW.

[16] Exhibit "4", folder of exhibits.

called him about petitioner's unliquidated cash advance in December 2007, Tria consequently reported that the amount was already paid in full by means of the aforesaid deduction.[17]

With the issuance of the warrant for his arrest pursuant to public respondent's Resolution dated 21 February 2008, petitioner posted bail in the reduced sum fixed in the order granting his motion for reduction of the recommended bail. Acting on petitioner's motion for reconsideration of its 19 November 2007 Resolution, the Office of the Deputy Ombudsman for Luzon, in turn, issued a Memorandum dated 28 September 2008 which, while denying said motion for lack of merit, recommended the filing of an amended information to correct the amount subject of the charge. The accusative portion of the amended information subsequently filed states:

> That on May 17, 2006, or sometime prior or subsequent thereto, in Santa Cruz, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Domingo G. Panganiban, a public officer, being then the Municipal Mayor of Sta. Cruz, Laguna and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, obtained cash advances in the total amount of Php500,000.00 from the Municipal Treasury of Sta. Cruz, Laguna to finance his projected travel to Adelaide, South Australia but said accused once in possession of said amount of money did not undertake his official travel and **was only able to return the amount of Php36,068.22 upon demand by a duly authorized officer and therefore has willfully, unlawfully and feloniously taken, misappropriated and converted to his own personal use and benefit the amount of Php463,931.78,** to the damage and prejudice of the government in the aforestated amount.
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> CONTRARY TO LAW.[18]

Arraigned with the assistance of counsel, petitioner entered a "Not Guilty" plea on 26 June 2009. The preliminary and pre-trial conferences subsequently terminated, public respondent

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[17] TSN, 11 November 2010, p. 9.

[18] Records, Vol. I, pp. 120-121.

went on to conduct the trial of the case on the merits. To prove the accusation, the prosecution called Lorenzo, Ciriaco, Valles and Leilani T. Penarroyo (Penarroyo), a Clerk assigned at petitioner's office who acknowledged receiving and turning over to petitioner the 15 August 2006 demand letter from the COA.[19] Marked in the course of the testimonies of the above-named witnesses, the following documents were admitted in evidence by public respondent when formally offered by the prosecution: (a) DV No. 05-372; (b) Obligation Slip; (c) Duplicate Copy of the Check; (d) documents pertaining to petitioner's planned official travel to Adelaide, South Australia; (e) report, letter, indorsement and documents regarding the unliquidated cash advance as of 31 August 2006; (f) COA's 15 August 2006 demand letter to petitioner; and (g) the list of officials with unliquidated advances as of 30 September 2007 prepared by Ciriaco.[20]

Its Demurrer to Evidence denied in public respondent's (Minute) Resolution dated 28 June 2010,[21] the Defense proceeded to present the testimonies of Lorenzo and Tria.[22] In lieu of the testimonies of Farra T. Salvador (Salvador), the Municipal Human Resource Manager, the parties stipulated that said witness would be able to testify on petitioner's earned leave record.[23] The parties likewise dispensed with the testimony of Valles whose signatures on the 9 November 2007 certification and DV No. 100-2007-11-1152 were, instead, admitted.[24] The following documents were, upon being formally offered by the Defense, further admitted in evidence by public respondent, to wit: (a) subsidiary ledger of the municipality; (b) petitioner's statement

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[19] TSNs, 20 October 2009, pp. 14-16; 28 October 2009, pp. 6-9; and 2 February 2010, pp. 36-39.

[20] Exhibits "A", "B", "C","D", "E" and sub-markings, folder of exhibits.

[21] Records, Vol. I, p. 275. (Original copy of the MINUTES in the records); Copies of Notice of Minute Resolution without the attached Minute Resolution are attached in the records (pp. 276-281).

[22] TSNs, 15-16 September 2010 and 11 November 2010.

[23] *Rollo*, p. 118.

[24] *Id*. at 118-119.

of leave credits, leave record and application for terminal leave; (c) DV No. 100-2007-11-1152, together with the journal entry voucher and petitioner's obligation request for the payment of terminal leave; (d) the 9 November 2007 Certification; (e) a 9 July 2009 Certification clearing petitioner of money and property accountabilities; (f) COA's 10 October 2007 demand letter; and (g) petitioner's 16 October 2007 explanation.[25]

On 18 November 2013, public respondent rendered the herein assailed Decision[26] finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds, upon the following ratiocinations: (a) the defense of good faith is unavailing since petitioner was legally obliged to return the money immediately after the period of his intended travel lapsed; (b) the cash advance released in his favor was fully returned by petitioner by way of deductions from his salaries and terminal leave pay more than a year after COA's demand for the settlement thereof and long after his last term of office expired; (c) payment not being a cause for extinction of criminal liability, the full restitution of the amount alleged to have been malversed does not exculpate petitioner therefrom; and (d) at most, restitution of the malversed amount is a mitigating circumstance that entitles petitioner to a reduction of the imposable penalty. Duly opposed by the Prosecution, petitioner's motion to reopen the case anchored on the supposed negligence of his previous counsel was denied in public respondent's Resolution dated 5 March 2014,[27] hence, this petition.

Petitioner urges the grant of his petition and the reversal of the assailed decision on the following grounds:

A.

THE SANDIGANBAYAN GRAVELY ERRED IN CONVICTING THE PETITIONER IN ITS APPEALED DECISION.

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[25] Exhibits "2", "3", "4", "5", "6", "7", "8" and sub-markings, folder of exhibits.

[26] *Rollo*, pp. 106-130.

[27] *Id*. at 298-304.

B.

THE SANDIGANBAYAN ERRED IN ITS APPEALED DECISION WHEN IT IMPOSED A PRISON SENTENCE THAT IS NOT IN ACCORDANCE WITH THE INDETERMINATE SENTENCE LAW.[28]

The petition is impressed with merit.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.[29] For a prosecution of the crime to prosper, concurrence of the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.[30] Article 217 of the *Revised Penal Code* pertinently provides as follows:

ARTICLE 217. *Malversation of public funds or property — Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer*:

xxx xxx xxx

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua.*

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[28] *Id*. at 67.

[29] *Pondevida v. Sandiganbayan,* 504 Phil. 489, 507 (2005).

[30] *People v. Pantaleon, Jr., et al.*, 600 Phil. 186, 208 (2009); *Diaz v. Sandiganbayan,* 361 Phil. 789, 803 (1999).

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

Public respondent correctly ruled that petitioner was a public officer, satisfying the first element of the crime of malversation of public funds or property. However, public respondent erroneously ruled that petitioner had custody or control of the funds or property by reason of the duties of his office; that the funds or property are public funds or property for which he was accountable; and that he had appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public.[31] Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

The confusion in this case arose from the start, when the Office of the Deputy Ombudsman for Luzon accused petitioner

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[31] See also *Salamera v. Sandiganbayan,* 362 Phil. 556, 566 (1999), citing Chief Justice Ramon C. Aquino, THE REVISED PENAL CODE, 1987 ed., Vol. II, p. 447.

with the crime of malversation of public funds, notwithstanding the fact that what he received from the Municipality of Sta. Cruz Laguna was a cash advance – a cash advance which was not shown to have been fraudulently taken by petitioner from the municipality, either by himself or in cahoots with the treasurer, cashier or any other accountable officer. In fact, said cash advance was shown to have been properly acquired by documentary proof.

As narrated, petitioner was granted a cash advance in the sum of Php500,000.00 for an intended official travel to Adelaide, Australia from 9 June to 9 July 2006 which did not push through. His attention called to his obligation to liquidate the aforesaid sum, petitioner entered into an agreement with Lorenzo for the sum to be liquidated by means of salary deductions which was, accordingly, implemented. That the agreement was already in place within the 60-day period for liquidation provided under COA Circular 97-002 is evident from the fact that, by the time Ciriaco caused the 15 August 2006 demand letter to be served upon petitioner, the amount to be liquidated had already been reduced to Php463,931.78. The practice was continued until the end of petitioner's term, with the remaining balance of the unliquidated cash advance eventually satisfied by deducting the sum of Php256,308.45 from his terminal leave pay of Php359,947.98 on 22 November 2007.

Had the Office of the Deputy Ombudsman for Luzon made the correct information and subsequent amended information, the charge should have been failure of accountable officer to render accounts under Art. 218 of the Revised Penal Code, not malversation of public funds or property under Art. 217.

Article 218 provides as follows:

Art. 218. *Failure of accountable officer to render accounts.* — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor,[32] or to a provincial auditor and who fails to do so for a period of two months after such accounts

[32] Now Commission on Audit. (Citation supplied.)

should be rendered, shall be punished by prision correccional in its minimum period, or by a fine ranging from ₱200 to ₱6,000 pesos, or both.

The erroneous information against the accused was exacerbated when the public respondent went on to convict the accused for malversation under Article 217 despite the contrary documentary proof and the testimonies of witnesses both of the prosecution and defense during trial, showing a properly issued cash advance.

Even before he was required by the COA to account for the unliquidated cash advance, petitioner had already instructed Lorenzo to withhold his Php18,000.00 monthly salary. Because Lorenzo started to withhold petitioner's salary starting July 2006 or even before Ciriaco's 15 August 2006 demand letter, the latter reported the corresponding reduction of the amount to be liquidated to the COA Regional Cluster Director. Questioned whether such an agreement was an allowed practice, Ciriaco's successor, Tria, significantly testified as follows:

Q. Mr. Witness, during your assignment as State Auditor in the Municipality of Sta. Cruz[,] Laguna, what matter, if any, did you come across relating to accused Domingo Panganiban?

A. Since I assumed back in October of 2007 and since we are required to submit a quarterly report of outstanding cash advances, I came across the cash advance in the amount of ₱256,000.00 plus of the municipal mayor and inquired about the said transaction from the accountant.

Q. Relative to this amount that you mentioned, what action or did you do about it, if any, at that time?

A. Since we assumed in October 2007 and there was [no] record turned over to us, and we have observed that there was an outstanding balance of ₱200,000.00, I issued a demand letter to the former Mayor to determine the status of the said cash advance and also to determine whether it was acknowledged by the former mayor.

x x x x x x x x x

Q. After you sent that demand letter, what happened next, if any?
A. I received an explanation from the former Municipal Mayor on October 6, 2007.

Q. When you received an explanation, was it in writing, Mr. Witness?
A. Yes, sir.

xxx xxx xxx

Q. What happened next, if any, Mr. Witness, after you received this explanation from the accused, Panganiban?
A. In December of 2007, our Regional Office called my attention regarding the said cash advance. I reported that the cash advance was already paid in full because the terminal pay of the former Municipal Mayor was already paid and it was already deducted from the proceeds of the terminal pay.

Q. How did you communicate this matter?
A. They called me at our office in Sta. Cruz Laguna, Provincial Office, sir.

ATTY. VISTAN
Q. Was there any written documentation of this report?
A. I cannot recall any written documentation. All I know is that they called me and I informed them that the said cash advance was already paid and on the following year – already, the status of [the] cash advances were reported to our office.

xxx xxx xxx

Q. Based on the explanation, Mr. Witness, what were your findings since you issued a demand letter asking the accused to liquidate the amount of ₱256,318.45 within thirty (30) days from receipt of the demand letter?
A. Upon reading the explanation of the former Municipal Mayor, I came to know that there was [an] agreement between the Municipal Mayor and the former Auditor for the original cash advance of ₱500,000.00 and as agreed upon, it was deducted from the salary of the Mayor.

ATTY. VISTAN
Q. Based on your experience as State Auditor for 24 years, Mr. Witness, have you come across any other matter wherein cash advance was liquidated in this manner that you found in relation to the case of Domingo Panganiban?
A. Yes, sir.

Q. Can you recall how many cases of such nature or how many liquidations of such nature you encountered in your career as State Auditor?
A. There are certain cash advances particularly in the Municipality of Mayhay wherein there are unliquidated cash advances but the persons liable arranged for the payment by instalment. It was an agreement between the person and the municipality and we just respect the agreement and allow it that way.

ATTY. VISTAN
Q. In addition to that matter, is there anything else that comes to your mind, any other cash advance and/or liquidation thereof?
A. I think that particular case of the Mayor.

Q. Do you know if there were any charges or cases that arose because of that matter?
A. No particular case, sir.

JUSTICE GESMUNDO
Q. So what you are telling us, Mr. Witness, is that this is an allowed practice?
A. Yes, your Honor, we allowed that practice.[33]

The practice of liquidating cash advances by means thereof being one that is allowed, the withholding of petitioner's salaries continued until the expiration of his term of office. With the remaining balance satisfied from his terminal leave pay, petitioner was eventually cleared of financial and property liabilities to the municipality. Long before petitioner was arraigned under the amended Information on 26 June 2009, Tria had, in fact,

[33] TSN, 11 November 2010, pp. 6-12.

already reported to the COA Regional Office in December 2007 that the cash advance had already been fully paid. To the mind of the Court, the confluence of these circumstances serves to negate the factual and legal bases for Petitioner's liability for failure to render accounts, even if it was this correct charge which was made against him. The manner by which he liquidated the cash advance was, after all, admitted as an allowed practice and was permitted to continue until the full amount was satisfied. At this point, the Court reiterates the finding in *Yong Chan Kim v. People,*[34] a case for swindling (estafa), but which in principle is applicable in this case. Therein, it was ruled, thus:

xxx xxx xxx

Liquidation simply means the settling of an indebtedness. An employee, such as herein petitioner, who liquidates a cash advance is in fact paying back his debt in the form of a loan of money advanced to him by his employer, as per diems and allowances. Similarly, as stated in the assailed decision of the lower court, "if the amount of the cash advance he received is less than the amount he spent for actual travel x x x he has the right to demand reimbursement from his employer the amount he spent coming from his personal funds." In other words, the money advanced by either party is actually a loan to the other. Hence, petitioner was under no legal obligation to return the same cash or money, i.e., the bills or coins, which he received from the private respondent.

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The Court further declared in that case, thus:

xxx xxx xxx

The ruling of the trial judge that ownership of the cash advanced to the petitioner by private respondent was not transferred to the latter is erroneous. Ownership of the money was transferred to the petitioner. Even the prosecution witness, Virgilio Hierro, testified thus:

Q When you gave cash advance to the accused in this Travel Order No. 2222 subject to liquidation, who owns

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[34] G.R. No. 84719, January 25, 1991, 193 SCRA 344; citing *Yam v. Malic*, G.R. Nos. 50550-52, October 31, 1979, 94 SCRA 30.

the funds, accused or SEAFDEC? How do you consider the funds in the possession of the accused at the time when there is an actual transfer of cash? x x x

A *The one drawing cash advance already owns the money* but subject to liquidation. If he will not liquidate, he is obliged to return the amount.

Q x x x x x x x x x.
So why do you treat the itinerary of travel temporary when in fact as of that time the accused owned already the cash advance. You said the cash advance given to the accused is his own money. In other words, at the time you departed with the money it belongs already to the accused?

A Yes, but subject for liquidation. He will be only entitled for that credence if he liquidates.

Q [In] other words, it is a transfer of ownership subject to a suspensive condition that he liquidates the amount of cash advance upon return to station and completion of the travel?

A Yes, sir.

x x x x x x x x x[35]

In addition, on the matter of liquidation of cash advance, Commission on Audit Circular No. 96-004 dated April 19, 1996 pertinently states:

x x x x x x x x x

3.2.2 LIQUIDATION OF CASH ADVANCE

3.2.2.1 The cash advance for travel shall be liquidated by the official/employee concerned strictly within sixty (60) days after his return to the Philippines as required under Section 16, of EO 248, as amended otherwise, payment of his salary shall be suspended until he complies therewith.

3.2.2.2 The official/employee concerned shall draw a liquidation voucher to be supported by the following:

a. Certificate of travel completed (Appendix B):

[35] *Id.* at 353.

b. Plane or boat tickets covering actual transportation fare from the point of embarkation in the Philippines to the place of destination and back, provided, that the presentation of a certification or affidavit of loss executed by the official or employee concerned shall not be considered as appropriate replacement for the required transportation tickets;

c. Bills and receipts covering representation expenses incurred, if the official concerned has been authorized to incur the same;

d. Hotel room bills with official receipts, regardless of whether or not the amount exceeds the prescribed rate of Two Hundred United States Dollars per day, provided that for this purpose, no certification of affidavit of loss shall be considered or accepted;

e. Where the actual travel expenses exceeds the prescribed rate of Three Hundred United States Dollars per day, The certification of the head of the agency concerned as to its absolute necessity shall also be required in addition to the presentation of the hotel room bills with official receipts.

3.2.2.3 Where a trip is cancelled, the amount paid in advance shall be refunded in full. In cases where the trip is cut short or terminated in advance of the itinerary, the excess payment shall likewise be refunded. The head of the agency shall see to it such refunds are enforced promptly.

In all, Petitioner's full liquidation of his cash advance by means of an arrangement allowed by the COA ultimately translated into a legal avoidance of violation of Art. 218.

And even granting that it was malversation which petitioner was alleged to have committed, it has been ruled that good faith is a valid defense in a prosecution for malversation of public funds as it would negate criminal intent on the part of the accused.[36]

[36] *Tabuena v. Sandiganbayan*, G.R. Nos. 103501-03, February 17, 1997, 268 SCRA 332.

Petitioner's full liquidation of his cash advance by means of an arrangement allowed by the COA ultimately translated into the good faith he interposed as a defense.

The felony of malversation of public funds being one which involves breach of the public trust that is uniformly punished whether committed through *dolo* or *culpa*,[37] defenses relative thereto are to be rightfully accorded strict and close scrutiny. Reviewing relevant jurisprudence on the matter, however, the Court handed down the following pronouncements in *Cabello v. Sandiganbayan*,[38] to wit:

> [I]n *Villacorta*[39] this court found that the cash in the possession of the accused therein was found short because of the disallowance by the audit team. The items comprising the shortage were paid to government personnel either as wages, travelling expenses, salaries, living allowances, commutations of leave, terminal leaves and for supplies. The accused therein did not put the missing funds to personal use; in fact, when he demanded payment from said personnel, they redeemed their chits and made restitution. Furthermore, at the time of the audit, the accused had an actual balance deposit with the provincial treasurer in the sum of ₱64,661.75.
>
> In *Quizo*,[40] the therein accused incurred a shortage in the total sum of ₱17,421.74 because the audit team disallowed ₱16,720.00 in cash advances he granted to some employees, ₱700.00 representing accommodated private checks, and an actual cash shortage of ₱1.74. On the same day when the audit was conducted, ₱406.18 was reimbursed by the accused, ₱10,515.56 three days thereafter and the balance of ₱6,500.00 another three days later. This Court, in a spirit of leniency, held that the accused had successfully overthrown the presumption of guilt. None of the funds was used by him for his personal interest. The reported shortage represented cash advances given in good faith and out of goodwill to co-employees, the itemized list of which cash advances was verified to be correct by the audit examiner. There was no negligence, malice or intent to defraud; and the actual cash shortage was only ₱1.74 which, together with the disallowed items, was fully restituted within a reasonable time.

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[37] *Diaz v. Sandiganbayan, supra* note 30 at 802.

[38] 274 Phil. 369 (1991).

[39] *Villacorta v. People,* 229 Phil. 422 (1986).

[40] *Quizo v. Sandiganbayan,* 233 Phil. 103 (1987).

While we do not wish it to appear that the mere fact of restitution suffices to exculpate an accountable public officer, as each case should be decided on the basis of the facts thereof, it appears that the Court was of the persuasion that the confluence of the circumstances in the *Villacorta* and *Quizo* cases destroyed the *prima facie* presumption of peculation and criminal intent provided for in said Article 217.

The factual and legal bases for petitioner's criminal liability thus discounted, the Court will no longer dwell on great length on the propriety of the penalty handed down by public respondent. On the theory that he was guilty as charged, petitioner was imposed the "indeterminate penalty of imprisonment [for] ten (10) years and one day to twelve (12) years, five (5) months and ten (10) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal*, as maximum."[41] While the *Indeterminate Sentence Law* mandates the imposition of an indeterminate sentence with minimum and maximum periods for the benefit of the accused, it goes without saying that the minimum and maximum penalties to be imposed should, themselves, be determinate.

WHEREFORE, premises considered, judgment is hereby rendered **REVERSING** and **SETTING ASIDE** Sandiganbayan's assailed 18 November 2013 Decision. In lieu thereof, another is entered **ACQUITTING** Domingo G. Panganiban.

The Court orders the public respondent to forthwith cancel the cash bail of the petitioner and immediately reimburse the amount to him.

SO ORDERED.

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

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[41] *Rollo*, p. 129.

SECOND DIVISION

[G.R. No. 212256. December 9, 2015]

FARIDA YAP BITTE AND THE HEIRS OF BENJAMIN D. BITTE, namely: JACOB YAP BITTE, SHAIRA DAYANARA YAP BITTE, FATIMA YAP BITTE and ALLAN ROBERT YAP BITTE, *petitioners, vs.* **SPOUSES FRED AND ROSA ELSA SERRANO JONAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL IS AVAILABLE REMEDY FOR RTC DECLARATION OF DEFAULT.—** The rule is that "right to appeal from the judgment by default is not lost and can be done on grounds that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law." If a party who has been declared in default has in his arsenal the remedy of appeal from the judgment of default on the basis of the decision having been issued against the evidence or the law, that person cannot be denied the remedy and opportunity to assail the judgment in the appellate court. Despite being burdened by the circumstances of default, the petitioners may still use all other remedies available to question not only the judgment of default but also the judgment on appeal before this Court. Those remedies necessarily include an appeal by *certiorari* under Rule 45 of the Rules of Court.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; A CONTRACT TRANSMITTING OR EXTINGUISHING REAL RIGHTS OVER IMMOVABLE PROPERTY SHOULD BE IN A PUBLIC DOCUMENT; DEED OF SALE NOT VALIDLY NOTARIZED WAS NOT A PUBLIC DOCUMENT BUT TRANSACTION THEREOF WAS NOT NECESSARILY INVALID.—** Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over immovable property should be in a public document. x x x Not having been properly and validly notarized, the deed of sale cannot be considered a

public document. It is an accepted rule, however, that the failure to observe the proper form does not render the transaction invalid. It has been settled that a sale of real property, though not consigned in a public instrument or formal writing is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties.

3. REMEDIAL LAW; EVIDENCE; PROOF OF PRIVATE DOCUMENT; DEED OF SALE NOT DULY ESTABLISHED CAN BE CONSIDERED NON-EXISTENT.— Not being considered a public document, the deed is subject to the requirement of proof under Section 20, Rule 132, which reads: Section 20. *Proof of private document.*- Before any private document offered as authentic is received in evidence its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; or (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be. Accordingly, the party invoking the validity of the deed of absolute sale had the burden of proving its authenticity and due execution. x x x The genuineness and due execution of the deed of sale in favor of Spouses Bitte not having been established, the said deed can be considered non-existent.

4. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; DOCTRINE OF APPARENT AUTHORITY; THIRD PARTY DEALING BONA FIDE WITH ACCREDITED AGENT NOT BOUND BY REVOCATION OF AGENCY UNLESS PREVIOUSLY NOTIFIED THEREOF, ACTUAL OR IMPLIED.— Basic is the rule that the revocation of an agency becomes operative, as to the agent, from the time it is made known to him. Third parties dealing *bona fide* with one who has been accredited to them as an agent, however, are not affected by the revocation of the agency, unless notified of such revocation. This refers to the doctrine of apparent authority. Under the said doctrine, acts and contracts of the agent within the apparent scope of the authority conferred on him, although no actual authority to do such acts or has been beforehand withdrawn, revoked or terminated, bind the principal. x x x The notice or knowledge [of revocation of agency] may be actual or implied. In either case, there is no apparent authority to speak of and all contracts entered into by the former agent with a third person cannot bind the principal. The reason behind this is that a third

person cannot feign ignorance of facts which should have put him on guard and which he had a means of knowing. "*Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority*." In *Cervantes v. Court of Appeals*, the Court wrote that "when the third person, knows that the agent was acting beyond his power or authority, the principal cannot be held liable for the acts of the agent."

5. **ID.; ID.; ID.; REVOCATION OF AGENCY; CONSTRUCTIVE NOTICE; PRESENT WHERE THE PRINCIPAL DIRECTLY MANAGES THE BUSINESS ENTRUSTED TO THE AGENT, DEALING DIRECTLY WITH THIRD PERSONS.—** Under Article 1924 of the New Civil Code, "an agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons." Logic dictates that when a principal disregards or bypasses the agent and directly deals with such person in an incompatible or exclusionary manner, said third person is deemed to have knowledge of the revocation of the agency. They are expected to know circumstances that should have put them on guard as to the continuing authority of that agent. The mere fact of the principal dealing directly with the third person, after the latter had dealt with an agent, should be enough to excite the third person's inquiring mind on the continuation of his authority.

6. **ID.; OBLIGATIONS AND CONTRACTS; UNENFORCEABLE CONTRACT; CONTRACT EXECUTED BY AN AGENT WITH REVOKED AUTHORITY IS UNENFORCEABLE.—** A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party." Considering that the sale was executed by an agent whose authority, be it actual or apparent, had been revoked, the transaction is **unenforceable** pursuant to Articles 1317 and 1403(1) of the Civil Code.

7. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; PERSONS WHO MAY REDEEM A FORECLOSED PROPERTY.—** Section 27 of Rule 39 of the Rules of Court enumerates the persons who may exercise the right of redemption of a foreclosed property. (a)

The judgment obligor; or his successor in interest in the whole or any part of the property; and (c) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner. x x x In *Castro v. IAC*, as correctly cited by the CA, "only such persons as are authorized to do so by statute can redeem from an execution sale."

8. CIVIL LAW; SPECIAL CONTRACTS; SALES; PURCHASER IN GOOD FAITH AND FOR VALUE; BURDEN OF PROOF.— Settled is the rule that the burden of proving the status of a purchaser in good faith and for value lies upon one who asserts that status. This *onus probandi* cannot be discharged by mere invocation of the ordinary presumption of good faith. x x x The rule is that a person who buys from one who is not the registered owner is expected to "examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land. A higher degree of prudence is thus expected from that person even if the land object of the transaction is registered."

APPEARANCES OF COUNSEL

Aldevera Law Office for petitioners.

Dublin Relampagos Law Office and *Gershon A. Patalinghug, Jr.* for respondents.

D E C I S I O N

MENDOZA, *J.*:

In this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, the petitioners, Farida Yap Bitte and Heirs of Benjamin Bitte *(the petitioners),* seek the review of the September 26, 2013 Decision[2] and February 26, 2014

[1] *Rollo*, pp. 3-31.

[2] *Id.* at 123-145. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring.

Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 01596-MIN, which reversed the January 18, 2007 Joint Decision[4] of the Regional Trial Court, Branch 13, Davao *(RTC-Branch 13),* arrived at in favor of respondents, Spouses Fred and Rosa Elsa Serrano Jonas *(Spouses Jonas).*

Factual Antecedents

This controversy stemmed from two civil cases filed by the parties against each other relative to a purported contract of sale involving a piece of property situated at 820 corner Jacinto Street and Quezon Boulevard, Davao City *(subject property)*. It was initially covered by TCT No. T- 112717 in the name of Rosa Elsa Serrano Jonas (Rosa Elsa) and presently by TCT No. T-315273 under the name of Ganzon Yap, married to Haima Yap *(Spouses Yap)*.

On July 19, 1985, before Rosa Elsa went to Australia, she had executed a Special Power of Attorney (*SPA*) authorizing her mother, Andrea C. Serrano *(Andrea)*, to sell the property.

Sometime in May 1996, Cipriano Serrano *(Cipriano)*, son of Andrea and brother of Rosa Elsa, offered the property for sale to Spouses Benjamin and Farida Yap Bitte *(Spouses Bitte)* showing them the authority of Andrea. On September 3, 1996, Cipriano received from Spouses Bitte the amount of ₱200,000.00 as advance payment for the property. Later on, on September 10, 1996, he received the additional amount of ₱400,000.00.

Spouses Bitte sought a meeting for final negotiation with Rosa Elsa, the registered owner of the subject property. At that time, Rosa Elsa was in Australia and had no funds to spare for her travel to the Philippines. To enable her to come to the country, Spouses Bitte paid for her round trip ticket.

On October 10, 1996, shortly after her arrival here in the Philippines, Rosa Elsa revoked the SPA, through an instrument of even date, and handed a copy thereof to Andrea.

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[3] *Id*. at 166-167. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring.

[4] *Id*. at 48-61. Penned by Judge Isaac G. Robillo, Jr.

The next day, on October 11, 1996, the parties met at Farida Bitte's office, but no final agreement was reached. The next day, Rosa Elsa withdrew from the transaction.

On October 17, 1996, Spouses Bitte filed before the RTC a Complaint for Specific Performance with Damages seeking to compel Rosa Elsa, Andrea and Cipriano to transfer to their names the title over the subject property. The case was docketed as **Civil Case No. 24,771-96** and raffled to RTC-Branch 13.

While the case was pending, Andrea sold the subject property to Spouses Bitte, through a deed of absolute sale, dated February 25, 1997, and notarized by one Atty. Bernardino Bolcan, Jr.

Immediately thereafter, Rosa Elsa asked Andrea about the sale. Her questions about the sale, however, were ignored and her pleas for the cancellation of the sale and restoration of the property to her possession were disregarded.

Undisputed by the parties is the fact that Rosa Elsa earlier mortgaged the subject property to Mindanao Development Bank. Upon failure to pay the loan on maturity, the mortgage was foreclosed and sold at a public auction on December 14, 1998 as evidenced by the annotation on the title, Entry No. 1173153.[5]

Armed with the deed of absolute sale executed by Andrea, Spouses Bitte were able to redeem the property on September 14, 1998 from the highest bidder, Thelma Jean Salvana, for ₱1.6 Million Pesos.

Thereafter, Spouses Bitte sold the property to Ganzon Yap *(Ganzon)*, married to Haima Yap.[6]

Civil Case No. 24,771-96 *(Spouses Bitte v. Rosa Elsa Serrano Jonas, Andrea C. Serrano and Cipriano Serrano, Jr.)*

[5] *Id.* at 129.

[6] *Id.* at 42.

As earlier recited, on October 17, 1996, Spouses Bitte filed before the RTC ***Civil Case No. 24,771-96,*** a Complaint for Specific Performance with Damages seeking to compel Rosa Elsa, Andrea and Cipriano to transfer the title of the subject property to their names.

In their Complaint, Spouses Bitte alleged that sometime in May 1996, the property was offered to them for sale by Cipriano, who showed them the SPA in favor of Andrea; that on September 3, 1996 and September 10, 1996, Cipriano received from them the respective amounts of ₱200,000.00 and then ₱400,000.00 as advance payments for the property; that they sought a meeting for final negotiation with Rosa Elsa, then the registered owner of the subject property; that at that time, Rosa Elsa was in Australia and had no funds to spare in order to return to the Philippines; that to enable her to come to the country, they paid for her round trip ticket; that on October 11, 1996, they and Rosa Elsa met at Farida Bitte's office; that an agreement of sale of the subject property for the total purchase price of ₱6.2 Million Pesos was reached; that ₱5 Million thereof would be paid on October 18, 1996 and the balance, thirty (30) days thereafter; that on the following day, Rosa Elsa withdrew from the transaction; and that on the same date, they demanded, through a letter, the execution of the necessary documents to effect the transfer of the property to their names, but to no avail.

On October 18, 1996, RTC-Branch 13 granted the prayer for the issuance of a Temporary Restraining Order (*TRO)* preventing Rosa Elsa and her agents from disposing the subject property. Subsequently, on November 8, 1996, a Writ of Preliminary Injunction *(WPI)* was issued in favor of Spouses Bitte.

In response, Rosa Elsa countered that despite her appointment of her mother, Andrea, as her attorney-in-fact/agent, she later gave her instructions not to sell the property; that her revocation barred the consummation of the contract to sell; that it was her belief that her return to the Philippines was in connection with the sale of another property situated in Cawag, San Isidro, Davao Oriental; that it was a surprise to her when she learned

that Cipriano was still negotiating for the sale of the subject property; that for said reason, she asked for a meeting with Spouses Bitte to discuss the issue; that in the meeting, upon learning of the source of her air fare, she offered to refund it and to return the unused ticket for her return trip, but Spouses Bitte refused her offer; that no authority was given to Cipriano to receive any advance payment for the property; and that Andrea's authority was revoked through a Deed of Revocation of the Special Power of Attorney *(SPA),* dated October 10, 1996.

During the pre-trial conference held on July 30, 1999, Spouses Bitte failed to appear. Consequently, RTC-Branch 13 dismissed their complaint and set the reception of Rosa Elsa's counterclaim for hearing.

Later on, Benjamin Bitte manifested the withdrawal of their counsel. RTC-Branch 13 then cancelled the reception of Rosa Elsa's evidence without reconsidering the dismissal of the complaint.

Civil Case No. 27,667-99 *(Spouses Fred Jonas and Rosa Elsa Serrano Jonas v. Sps. Benjamin Bitte and Farida Yap Bitte, Andrea C. Serrano, Reg. of Deeds and the Clerk of Court, RTC, Davao City)*

On November 16, 1999, Spouses Jonas filed before the RTC ***Civil Case No. 27,667-99,*** a complaint for Annulment of Deed of Absolute Sale, Cancellation of TCT and Recovery of Possession, Injunction, and Damages against Spouses Bitte.

In the Complaint, Spouses Jonas alleged that Rosa Elsa acquired the property before marriage; that on July 19, 1985, when she decided to leave for Australia to reside there, she executed an SPA of even date, granting her mother, Andrea, the authority to sell the subject property; that while in Australia, she decided that she would no longer sell the property; that she instructed her mother to stop offering the property to prospective buyers;

that upon arrival here in the Philippines in 1996, she revoked the SPA, through an instrument, dated October 10, 1996, and handed a copy thereof to Andrea; that later, she received information that the property was subsequently sold to Spouses Bitte, through a Deed of Absolute Sale, dated February 25, 1997, signed by her mother, Andrea; and that she then pleaded for the return of the property, but Andrea repeatedly ignored her.

Spouses Jonas eventually sought judicial recourse through the filing of a complaint for the Annulment of the Deed of Absolute Sale and Reconveyance of the Property which was raffled to RTC-Branch 9.

On November 17, 1999, Branch 9 issued a 20-day TRO restraining Spouses Bitte from selling or disposing the subject property. On December 6, 1999, after hearing, it issued a WPI for the same purpose.

On July 11, 2000, Rosa Elsa moved for the admission of an Amended Complaint in order to implead Spouses Yap because the title over the subject property had been subsequently registered in their names.

Consolidation of the Two Cases

As earlier recited, RTC-Branch 13 dismissed the complaint of Spouses Bitte and set the reception of Rosa Elsa's counterclaim for hearing. Later on, RTC-Branch 13 cancelled the reception of Rosa Elsa's evidence without reconsidering the dismissal of the complaint.

Nonetheless, on May 26, 2000, RTC-Branch 13 reconsidered its earlier ruling after seeing the need to consolidate **Civil Case No. 27,667-99** with **Civil Case No. 24,771-99** pending before the RTC, Branch 9, Davao *(RTC-Branch 99)*. In the October 4, 2001 Order, the cases were ordered consolidated and were thereafter scheduled to be jointly heard before Branch 13.

On April 17, 2002, Spouses Bitte were again declared in default by RTC-Branch 13 for their failure to attend the pre-trial.

On January 4, 2003, the counsel of Spouses Bitte withdrew and a new one entered his appearance and then filed a verified motion for reconsideration.

On August 21, 2003, Spouses Bitte once again failed to appear in the pre-trial and were, thus, declared non-suited. Rosa Elsa then presented her evidence *ex parte.*

Joint Decision of the RTC-Branch13

On January 18, 2007, RTC-Branch 13 rendered a Joint Decision,[7] confirming the dismissal of Civil Case No. 24,771-96 and directing Spouses Bitte to pay Rosa Elsa the amount of ₱1,546,752.80, representing the balance of the sale of the subject. The dispositive portion of the Joint Decision reads:

WHEREFORE, judgment is hereby rendered in these cases as follows:

a. Reiterating the dismissal of Civil Case No. 24,771-96;
b. Directing spouses Benjamin and Farida Bitte to pay Rosa Elsa Serrano Jonas the amount of ₱1,546,752.80 (one million five hundred forty-thousand seven hundred fifty two and 80/100 pesos) representing the balance of the sale of the property subject of this case to them;
c. Directing spouses Benjamin and Farida Bitte to pay interest on the balance at the rate of 12% per annum from the date of this decision until fully paid.

SO ORDERED.[8]

Ruling of the CA

Aggrieved, Spouses Jonas appealed to the CA. On September 26, 2013, the CA *reversed* the RTC-Branch 13 Joint Decision. In so ruling, the CA focused on the validity and enforceability of the deed of absolute sale executed by Andrea in the name of Rosa Elsa. The CA explained:

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[7] *Id.* at 48-61. Penned by Judge Isaac G. Robillo, Jr.

[8] *Id.* at 61.

1. Andrea's execution on behalf of Rosa Elsa of the deed of absolute sale in favor of Spouses Bitte was void and unenforceable as the authority to represent Rosa Elsa had already been revoked as early as October 10, 1996. Without the authority to effect the conveyance, the contract was without effect to Rosa Elsa, who was a stranger to the conveyance in favor of Spouses Bitte. Rosa Elsa did not consent to the transaction either.

2. Considering that no valid conveyance was effected, Spouses Bitte had no right to redeem the foreclosed property because they were not among those persons who could redeem a property under Sec. 6 of Act. No. 3135 and Section 27 of Rule 39 of the Rules of Court. They could not be considered successors-in-interest or transferees because no right was conveyed by Rosa Elsa on account of the revocation of the authority given to Andrea.

3. Ganzon, the one who subsequently purchased the property from Spouses Bitte, was not an innocent purchaser of the property as the conveyance was attended with circumstances which should have alerted him of the fallibility of the title over the property. Ganzon transacted with Spouses Bitte, who were then not yet the registered owners of the property. He should have made inquiries first as to how Spouses Bitte acquired the rights over the property.

Thus, the CA disposed as follows:

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED** and the Joint Decision, dated 18 January 2007 of the RTC, Eleventh Judicial Region, Branch 13, Davao City, insofar as it pertains to Civil Case No. 27,667-99 is hereby **REVERSED** and **SET ASIDE**. Accordingly,

a) The Deed of Absolute Sale dated 25 February 1997 is hereby declared **NULL** and **VOID**.

b) Transfer Certificate of Title (TCT) No. T-315273 in the name of Ganzon Yap, married to Haima Yap, is declared **NULL** and **VOID**, and the Registry of Deeds of Davao City is hereby **DIRECTED** to cancel TCT No. T-315273,

and to issue a new title reinstating TCT No. T-112717 in the name of Rosa Elsa S. Serrano; and

c) Ganzon and Haima Yap and/or whoever is in possession of the subject property, or their agents and those acting for in their behalf are hereby **DIRECTED** to **VACATE** the subject property and surrender the possession of the same to plaintiff-appellant Rosa Elsa Serrano-Jonas.

SO ORDERED.[9]

Aggrieved, Spouses Bitte moved for reconsideration, but their motion was denied by the CA on February 26, 2014.[10]

Hence, this petition by the petitioners, Farida Yap Bitte and the Heirs of Benjamin Bitte.[11]

ISSUES

I

WHETHER OR NOT THE COURT OF APPEALS-MINDANAO STATION DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT ALLOWED THE APPELLANTS BRIEF FILED BY RESPONDENTS IN VIOLATION OF SECTION 7, RULE 44 OF THE RULES OF COURT

II

WHETHER OR NOT THE RULING OF THE COURT OF APPEALS FINDING THE REVOCATION OF THE SPA, DESPITE LACK OF BASIS, ENFORCEABLE AGAINST THIRD PERSONS IS IN ACCORD WITH LAW.

III

WHETHER OR NOT THE RULING OF THE COURT OF APPEALS FINDING THE DEED OF SALE INVALID IS SUPPORTED BY STRONG AND CONCLUSIVE EVIDENCE AS REQUIRED BY LAW.

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[9] *Id.* at 145.

[10] *Id.* at 166-167. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring.

[11] Hereinafter still referred to as Spouses Bitte for continuity and consistency.

IV

WHETHER OR NOT THE RULING OF THE COURT OF APPEALS DISREGARDING THE LEGAL EFFECTS OF THE FORECLOSURE SALE IS A DEPARTURE FROM THE ESTABLISHED JURIDICIAL PRONOUNCEMENTS.

V

WHETHER OR NOT THE RULING OF THE COURT OF APPEALS NOT FINDING GANZON YAP AS INNOCENT PURCHASER FOR VALUE IS CONSISTENT WITH THE PRINCIPLE OF INDEFEASIBLITY OF TITLE.[12]

In advocacy of their positions, the petitioners submit the following arguments:

1. The deed of absolute sale executed by Andrea was valid and legal because the SPA was not validly revoked as the revocation was not registered in the Office of the Register of Deeds of Davao City. Thus, Andrea's authority to transact with them on behalf of Rosa Elsa subsisted.

2. The CA decision, declaring the deed of absolute sale null and void, directing the cancellation of TCT No. T-315273, and reinstating TCT No. T-112717, without attacking the auction sale and redemption made by Spouses Bitte was a highly questionable act.

3. Considering that the deed of absolute sale was valid, they could redeem the property pursuant to Act. No. 3135, as amended, and Sec. 27 of Rule 39 of the Rules of Court.

4. No evidence was presented showing that Ganzon indeed bought the property in bad faith considering that the TCT No. T-112717 did not bear any annotation that should have alarmed him before buying the property. Ganzon could not have been expected to go beyond the title and look for vices or defects that could have rendered him not a purchaser in good faith and for value.

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[12] *Rollo*, pp. 14-15.

In their *Comment*,[13] Spouses Jonas called the attention of the Court to the fact that Spouses Bitte had been declared in default by the RTC. Spouses Jonas contended that, being in default, Spouses already lost the legal personality to resort to this petition. They also averred that the questions presented in this petition are one of facts and not of law. Not being a trier of facts, this Court must deny the petition.

On the merits, they argued that the SPA was not enforceable; that the deed of absolute sale executed by Andrea was a nullity because it was made with knowledge on the part of Spouses Bitte of the revocation of Andrea's authority; and that Spouses Yap could not be considered purchasers in good faith as they failed to verify the authority of the vendors, Spouses Bitte, considering that the certificate of title was still under Rosa Elsa's name.

In their *Reply*,[14] Spouses Bitte reiterated their positions as set out in their petition.

Ruling of the Court

The Court denies the petition.

Procedural Issues

Before tackling the substantive issues, a few procedural matters must first be threshed out.

The *first* is on the issue of the personality of the petitioners to file this petition. Spouses Jonas claim that the door to any reliefs for Spouses Bitte, be it through a motion for reconsideration or this subject petition, was closed by the finality and immutability of the RTC declaration of their default. In other words, it is their stand that the petitioners do not have the right to obtain recourse from this Court.

Spouses Jonas are mistaken.

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[13] *Id*. at 191-206.

[14] *Id*. at 255-265.

The rule is that "right to appeal from the judgment by default is not lost and can be done on grounds that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law."[15] If a party who has been declared in default has in his arsenal the remedy of appeal from the judgment of default on the basis of the decision having been issued against the evidence or the law, that person cannot be denied the remedy and opportunity to assail the judgment in the appellate court. Despite being burdened by the circumstances of default, the petitioners may still use all other remedies available to question not only the judgment of default but also the judgment on appeal before this Court. Those remedies necessarily include an appeal by *certiorari* under Rule 45 of the Rules of Court.

The *second* is on the propriety of the questions raised in the petition. Spouses Jonas claims that that the issues raised here, being factual, are inappropriate for being beyond the inquiry of this Court; that the factual findings of the CA could no longer be modified or even reviewed citing the long standing rule that they are final and conclusive. Although the rule admits of exceptions, they insist that none of them obtains in this case.

Indeed, the questions forwarded by Spouses Bitte are without doubt factual issues. This Court, being not a trier of facts, has no recourse but to give credence to the findings of the CA. Although it is true that there are exceptions as enumerated in *Development Bank of the Philippines v. Traders Royal Bank,*[16] none of these were invoked or cited in the petition.

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[15] *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines,* 479 Phil. 43, 52 (2004).

[16] 642 Phil. 547 (2010). The exceptions to the rule that factual findings of the Court of Appeals are binding on the Court are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

On that score alone, this petition should be denied outright.

Substantive Issues

The Genuineness and Due Execution of the Deed of Sale in favor of Spouses Bitte were not proven

The Court agrees with the CA that the genuineness and due execution of the deed of sale in favor Spouses Bitte were not established. Indeed, a notarized document has in its favor the presumption of regularity. Nonetheless, it can be impugned by strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects on the document.[17]

In the case at bench, it is on record that the National Archives, Records Management and Archives Office, Regional Archives Division, Davao City, certified that it had no copy on file of the Deed of Absolute Sale, dated February 25, 1997, sworn before Atty. Bernardino N. Bolcan, Jr., denominated as Doc. No. 988, Page No. 198, Book No. 30, Series of 1997. Their record shows that, instead, the document executed on said date with exactly the same notarial entries pertained to a Deed of Assignment of Foreign Letter of Credit in favor of Allied Banking Corporation.[18] Such irrefutable fact rendered doubtful that the subject deed of absolute sale was notarized.

Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over

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(7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[17] *Naranja v. Court of Appeals,* 603 Phil. 779, 788 (2009).

[18] Exhibits "J" and "K" for Civil Case No. 27,667-99, Folder of Exhibits.

immovable property should be in a public document. Pertinently, Section 19, Rule 132 of the Rules of Court reads:

> Section 19. *Classes of documents*.– For the purposes of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
> (b) Documents acknowledged before a notary public except last wills and testaments; and
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private.

Not having been properly and validly notarized, the deed of sale cannot be considered a public document. It is an accepted rule, however, that the failure to observe the proper form does not render the transaction invalid. It has been settled that a sale of real property, though not consigned in a public instrument or formal writing is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties.[19]

Not being considered a public document, the deed is subject to the requirement of proof under Section 20, Rule 132, which reads:

> Section 20. *Proof of private document*.- Before any private document offered as authentic is received in evidence its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

[19] *Tigno v. Spouses Aquino,* 486 Phil. 254, 268 (2004).

Accordingly, the party invoking the validity of the deed of absolute sale had the burden of proving its authenticity and due execution. Unfortunately, Spouses Bitte were declared as in default and, for said reason, they failed to discharge such burden in the court below. Thus, the Court agrees with the CA that the RTC erred in applying the presumption of regularity that attaches only to duly notarized documents as distinguished from private documents.

Without the presumption of regularity accorded to the deed coupled with the default of the party relying much on the same, the purported sale cannot be considered. It is as if there was no deed of sale between Spouses Bitte and Spouses Jonas.

The genuineness and due execution of the deed of sale in favor of Spouses Bitte not having been established, the said deed can be considered non-existent.

Spouses Bitte, however, are questioning the "non-existent" deed of sale.

Granting that its genuineness and due of execution were proven, the deed of sale is still unenforceable; Doctrine of Apparent Authority

Granting arguendo that the deed of sale may still be considered, the transaction is, nevertheless, unenforceable.

In this regard, petitioners posit that the deed must be recognized and enforced for the reason that, despite the revocation of the authority of Andrea prior to the execution of the deed, they should not be bound by that revocation for lack of notice. Consequently, they contend that as far as they are concerned, the contract of sale should be given effect for having been executed by someone appearing to them as authorized to sell.

They further argue that the failure of Rosa Elsa to register, file and enter the deed of revocation in the Registry of Deeds did not bind Spouses Bitte under Section 52 of the Property Registration Decree. Said section provides that *"[e]very conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered*

in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering." It is their position that without the registration of the revocation, they cannot be bound by it and the Court must respect the sale executed by her agent, Andrea.

The Court is not persuaded.

Basic is the rule that the revocation of an agency becomes operative, as to the agent, from the time it is made known to him. Third parties dealing *bona fide* with one who has been accredited to them as an agent, however, are not affected by the revocation of the agency, unless notified of such revocation.[20] This refers to the doctrine of apparent authority. Under the said doctrine, acts and contracts of the agent within the apparent scope of the authority conferred on him, although no actual authority to do such acts or has been beforehand withdrawn, revoked or terminated, bind the principal.[21] Thus, as to a third person, "apparent authority, when present, trumps restrictions that the principal has privately imposed on the agent. The relevant appearance is that the principal has conferred authority on an agent. An actor may continue to possess apparent authority although the principal has terminated the actor's actual authority or the agency relationship between them. This is so because a third party may reasonably believe that the actor continues to act as an agent and within the scope of actual authority on the basis of manifestations previously made by the principal. Such a manifestation, once made, remains operative until the third party has notice of circumstances that make it unreasonable to believe that the actor continues to have actual authority."[22] Hence,

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[20] State of Indiana Legislators, Restatement of the Law of Agency with Annotations to the Indiana Decisions, 11 Notre Dame L. Rev. 403 (1936), citing *Miller v. Miller,* 4 Ind. App. 128, 30 N. E. 535, (1892). (http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4133&context=ndlr) (Last visited September 2, 2015).

[21] See *Banate v. Philippine Countryside Rural Bank,* 639 Phil. 35 (2010), citing 2 Am. Jur. 102.

[22] Restatatement, 3d of Agency, § 7.08.

apparent authority may survive the termination of actual authority or of an agency relationship.[23]

To persons who relied in good faith on the appearance of authority, no prejudice must be had by virtue of such reliance on what appeared to them as perfectly in accordance with the observable authority of an agent. It must not be disturbed unless it can be shown that they had been notified or became aware of the termination of the agency. Stated differently, a third party cannot be bound by a revocation unless he had notice or knowledge of such revocation.

The notice or knowledge may be actual or implied. In either case, there is no apparent authority to speak of and all contracts entered into by the former agent with a third person cannot bind the principal. The reason behind this is that a third person cannot feign ignorance of facts which should have put him on guard and which he had a means of knowing. *"Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority."*[24] In *Cervantes v. Court of Appeals,*[25] the Court wrote that "when the third person, knows that the agent was acting beyond his power or authority, the principal cannot be held liable for the acts of the agent."

Generally, implied notice, also known as constructive notice, is attributed to third persons through the registration of the termination in the Registry of Deeds.

Under Article 1924 of the New Civil Code, "an agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons." Logic dictates that when a principal disregards or bypasses the agent and directly deals with such person in an incompatible or exclusionary manner, said third person is deemed to have knowledge of the revocation of the

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[23] Restatement, 3d of Agency, § 2.03.

[24] Section 3.1,1 Restatement (Third) Of Agency § 2.03 (2006), as adopted and Promulgated by the American Law Institute at Washington, D.C.,

[25] 363 Phil. 399 (1999).

agency. They are expected to know circumstances that should have put them on guard as to the continuing authority of that agent. The mere fact of the principal dealing directly with the third person, after the latter had dealt with an agent, should be enough to excite the third person's inquiring mind on the continuation of his authority.

In the case at bench, records show that Spouses Bitte initially transacted with Andrea as Rosa Elsa's agent on the basis of the SPA, dated July 19, 1985. Thereafter, however, Rosa Elsa returned to the Philippines and directly negotiated with them on October 11, 1996. Rosa Elsa's act of taking over in the actual negotiation for the sale of the property only shows that Andrea's authority to act has been revoked pursuant to Article 1924. At that point, Spouses Bitte had information sufficient enough to make them believe that Andrea was no longer an agent or should have compelled them to make further inquiries. No attempt was shown that Spouses Bitte took the necessary steps to inquire if Andrea was still authorized to act at that time. Despite their direct negotiation with Rosa Elsa, they still entered into a contract with Andrea on February 25, 1997.

> Persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agents authority, and in case either is controverted, the burden of proof is upon them to establish it.[26]

Legal Consequence

"It is a basic axiom in civil law embodied in our Civil Code that no one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him. A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party."[27] Considering

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[26] *Banate v. Philippine Countryside Rural Bank, supra* note 21, citing *Manila Memorial Park Cemetery, Inc. v. Linsangan,* 485 Phil. 764 (2004).

[27] *Ramon Rallos v. Felix Go Chan And Sons Realty Corporation,* 171 Phil. 222, 226 (1978).

that the sale was executed by an agent whose authority, be it actual or apparent, had been revoked, the transaction is **unenforceable** pursuant to Articles 1317 and 1403(1) of the Civil Code which read:

> Article 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
>
> A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be **unenforceable,** unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)
>
> ART. 1403. The following contracts are **unenforceable**, unless they are ratified:
>
> (1) Those entered into the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;
>
> x x x x x x x x x. [Emphases Supplied]

Considering that the deed of absolute sale was executed at a time when Spouses Bitte were deemed notified of the termination of the agency, the sale must be treated as having been entered into by Andrea in her personal capacity. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally.[28] Accordingly, Spouses Bitte acquired no better title than what Andrea had over the property, which was nil.

In sum, the deed of absolute sale executed by Andrea in favor of Spouses Bitte is unenforceable against Rosa Elsa because of their notice of the revocation of the agency.

Spouses Bitte did not possess the required personality to redeem the subject property

Obviously, Spouses Bitte acquired no interest in the subject property because the deed that they were anchoring their claims on

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[28] *Rufloe v. Burgos,* 597 Phil. 261 (2009), citing *Consolidted Rural Bank, Inc. v. CA,* 489 Phil. 320 (2005).

did not bind Rosa Elsa. Hence, they did not have the personality to redeem the foreclosed property as provided under Act No. 3135, as amended by Act No. 4118, and of Section 27, Rule 39 of the Rules of Court.

Act No. 3135, as amended, provides:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the **debtor**, his **successors in interest** or any **judicial creditor** or **judgment creditor of said debtor**, or any **person having a lien** on the property subsequent to the mortgage or deed of trust under which the property is sold, **may redeem** the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

[Emphases Supplied]

Section 27 of Rule 39 of the Rules of Court enumerates the persons who may exercise the right of redemption of a foreclosed property:

Section 27. *Who may redeem real property so sold.* — Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(a) The judgment obligor; or his successor in interest in the whole or any part of the property; and

(c) A creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner.

In *Castro v. IAC*,[29] as correctly cited by the CA, "only such persons as are authorized to do so by statute can redeem from an execution sale." Spouses Bitte were not so authorized considering that they were not among those enumerated in Act No. 3135 and Section 27 of Rule 39.

[29] 248 Phil. 95 (1988), citing 33 CJS 525.

Spouses Yap were also not Purchasers in Good Faith and For Value

After the purported "transfer" to Spouses Yap, the subject property was registered and a new title was issued in their names. Despite being impleaded in the case, however, they were silent and **did not even join Spouses Bitte in the subject petition**. It is Spouses Bitte who have been taking the cudgels for them.

On the issue, Spouses Bitte contend that Spouses Yap were purchasers in good faith and for value, and, for that reason, should have been recognized to have good title over the subject property.

Settled is the rule that the burden of proving the status of a purchaser in good faith and for value lies upon one who asserts that status.[30] This *onus probandi* cannot be discharged by mere invocation of the ordinary presumption of good faith.[31] Considering that the title was still registered in the name of Rosa Elsa when Spouses Yap bought it from Spouses Bitte, the burden was on them to prove that they were purchasers in good faith. In this regard, they failed. Not an iota of evidence was adduced by them to prove their ignorance of the true situation.

Through Spouses Bitte, Spouses Yap are invoking good faith for want of notice on their part that Andrea's authority had already been revoked. They point out that Ganzon, being a layman, could not have been expected to know the intricacies of the law for which reason that he could not attribute any fault in the deed of sale executed by a person with a SPA.

The Court is not persuaded.

Spouses Yap were not purchasers in good faith and for value. Significantly, Ganzon transacted with someone who was not even the registered owner of the property. At the time of the transfer, the property was still registered in the name of Rosa Elsa.

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[30] *Heirs of Bucton v. Go,* G.R. No. 188395, November 20, 2013, 710 SCRA 457, citing *Rufloe v. Burgos,* 597 Phil. 261 (2009).

[31] *Id*.

The rule is that a person who buys from one who is not the registered owner is expected to "examine not only the certificate of title but all factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land. A higher degree of prudence is thus expected from that person even if the land object of the transaction is registered."[32]

Here, no evidence was presented to show that Spouses Yap exerted that required diligence in determining the factual circumstances relating to the title and authority of Spouses Bitte as sellers of the property. The records are bereft of any proof that Spouses Yap showed eagerness to air their side despite being impleaded.

Hence, the protection the law accords to purchasers in good faith and for value cannot be extended to them. They have failed to show the required diligence needed in protecting their rights as buyers of property despite knowledge of facts that should have led them to inquire and investigate the possible defects in the title of the seller. Thus, in the same way that Spouses Bitte cannot claim valid title over the property, Spouses Yap cannot also do the same.

> A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[33]

In sum, the transfer to Spouses Yap was null and void as Spouses Bitte had nothing to sell or transfer to them.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[32] *Heirs of Sarili v. Lagrosa,* G.R. No. 193517, January 15, 2014, (http://sc.judiciary.gov.ph/pdf/web/viewer.htm?file=jurisprudence/2014/january2014/193517.pdf) (last visited September 7, 2015), citing *Bautista v. CA,* G.R. No. 106042, February 28, 1994, 230 SCRA 446, 456.

[33] *Rosaroso v. Soria,* G.R. No. 194846, June 19, 2013, 669 SCRA 232, citing *Spouses Sarmiento v. Court of Appeals,* 507 Phil. 101, 127-129 (2005).

[*] Per Special Order No. 2301, dated December 1, 2015.

FIRST DIVISION

[G.R. No. 213229. December 9, 2015]

FILINVEST ALABANG, INC., *petitioner, vs.* **CENTURY IRON WORKS, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE COVERED.—** [A] petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable, absent any of the exceptions recognized by case law. This rule is rooted on the doctrine that findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored. Hence, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the CA, are binding and conclusive upon this Court.

2. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; CONCLUSIVE PRESUMPTIONS; ISSUANCE OF CERTIFICATE OF COMPLETION AND ACCEPTANCE SIGNIFIES CONCLUSIVE APPROVAL.—** [B]oth the RTC and the CA found that petitioner had issued to respondent a Certificate of Completion and Acceptance signifying that it had already accepted respondent's work as up to par. [T]his factual finding already estops petitioner from withholding the amounts due to respondent's purported substandard workmanship. It is settled that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it," as in this case.

3. **CIVIL LAW; SPECIAL CONTRACTS; WORK AND LABOR; FIXED LUMP SUM CONTRACTS; PROJECT OWNER'S LIABILITY LIMITED TO WHAT IS STIPULATED; ANY CHANGE THEREIN REQUIRES WRITTEN AUTHORITY AND**

AGREEMENT.— Fixed lump sum contracts are governed by Article 1724 of the Civil Code. x x x In a fixed lump sum contract, the project owner agrees to pay the contractor a specified amount for completing a scope of work involving a variety of unspecified items of work without requiring a cost breakdown. The contractor estimates the project cost based on the scope of work and schedule and considers probable errors in measurement and changes in the price of materials. Otherwise stated, in fixed lump sum contracts, the project owner's liability to the contractor is ***generally*** limited to what is stipulated therein. However, it must be clarified that Article 1724 of the Civil Code does not preclude the parties from stipulating on additional works to the project covered by said fixed lump sum contract which would entail added liabilities on the part of the project owner. In fact, the said provision allows contractors to recover from project owners additional costs in fixed lump sum contracts, as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications, provided that there exists: (*a*) a written authority from the developer or project owner ordering or allowing the written changes in work; ***and*** (*b*) written agreement of the parties with regard to the increase in price or cost due to the change in work or design modification. Jurisprudence instructs that compliance with these two (2) requisites is a ***condition precedent*** for recovery and hence, the absence of one or the other condition bars the claim for additional costs.

4. ID.; DAMAGES; LEGAL INTEREST.— [A]ll the amounts due to respondent x x x should be subject to legal interest at the rate of twelve percent (12%) per annum from extrajudicial demand until June 30, 2013 and six percent (6%) per annum thereafter until full payment, in accordance with recent jurisprudence.

APPEARANCES OF COUNSEL

Leogardo & Magtanong for petitioner.
Sapalo Velez Bundang and Bulilan for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated December 27, 2013 and the Resolution[3] dated June 25, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97025, which affirmed with modification the Decision[4] dated August 3, 2010 of the Regional Trial Court of Pasig City (assigned in the City of San Juan), Branch 264 (RTC) in Civil Case No. 68850 and, accordingly, ordered petitioner Filinvest Alabang, Inc. (petitioner) to pay respondent Century Iron Works, Inc. (respondent) the aggregate amount of ₱1,392,088.68, plus legal interest at the rate of twelve percent (12%) per annum from the time of default until full payment thereof.

The Facts

Sometime in 1997 and 1998, petitioner awarded various contracts to respondent, including a contract for the completion of the metal works requirement of Filinvest Festival Supermall amounting to ₱29,000,000.00, as evidenced by the Agreement for Construction[5] executed by both parties (subject contract), as well as the General Conditions of Contract[6] (General Conditions) which supplements the subject contract. After the completion of said project, respondent tried to fully settle its credit with petitioner, but the latter, despite demands, allegedly withheld without any reasonable ground the payment of the

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[1] *Rollo*, pp. 11-28.

[2] *Id*. at 34-43. Penned by Associate Justice Sesinando E. Villon with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 45.

[4] *Id*. at 46-58. Penned by Presiding Judge Leoncio M. Janolo, Jr.

[5] *Id*. at 59-63.

[6] *Id*. at 81-92.

aggregate amount of ₱1,392,088.68, broken down as follows: (*a*) balance of the retention fee amounting to ₱40,880.00; (*b*) additional deduction of ₱227,500.00 from the latter's total payments; and (*c*) the cost of an additional scenic elevator enclosure amounting to ₱1,123,708.68. This prompted respondent to file the instant case for sum of money with damages against petitioner before the RTC, docketed as Civil Case No. 68850.[7]

In defense, petitioner maintained that: (*a*) it had the right to retain the amounts of ₱40,880.00 and ₱227,500.00 as they represented damages arising from respondent's substandard workmanship; and (*b*) the subject contract is lump sum in nature, hence, it cannot be liable for the amount representing the additional scenic elevator enclosure absent any instruction authorizing the construction of the same.[8]

The RTC Ruling

In a Decision[9] dated August 3, 2010, the RTC granted respondent's claim for the amount of ₱227,500.00 plus legal interest, but denied the rest of the latter's claims.[10]

The RTC found that petitioner is already estopped from claiming damages purportedly arising from respondent's substandard workmanship, considering its issuance of a Certificate of Completion and Acceptance[11] signifying its acceptance of respondent's work as up to par. As such, petitioner must remit the amount of ₱227,500.00 to respondent.[12] However, the RTC held that since the subject contract is lump sum in nature, petitioner cannot be held liable for the cost of the additional scenic elevator enclosure amounting to ₱1,123,708.68 as its liability is already fixed at the lump sum contract price of ₱29,000,000.00.[13]

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[7] See *id*. at 34-36.

[8] See *id*. at 36.

[9] *Id*. at 46-58.

[10] *Id*. at 57.

[11] Records, Vol. 1, pp. 387-388.

[12] See *rollo*, p. 57.

[13] See *id*. at 56.

Aggrieved, respondent appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated December 27, 2013, the CA affirmed the RTC ruling with modification, ordering petitioner to pay respondent the amounts of ₱40,880.00 and ₱1,123,708.68 as well, both with legal interest at the rate of twelve percent (12%) per annum from the time of default until full payment.[16]

The CA agreed with the RTC that petitioner is estopped from asserting respondent's poor workmanship in view of its issuance of a Certificate of Completion and Acceptance. As such, petitioner must pay not only the amount of ₱227,500.00 initially ordered by the RTC, but also the amount of ₱40,880.00 withheld by petitioner on account of respondent's purported defective works, which was overlooked by the RTC in its ruling.[17]

However, contrary to the RTC's finding, the CA held that the subject contract is not fixed lump sum in nature and, thus, petitioner's liability over the subject contract cannot be limited to ₱29,000,000.00 as stipulated. Hence, the parties may stipulate on additional works beyond what was specified in the subject contract, as in this case where they agreed on the installation of an additional scenic elevator enclosure which cost ₱1,123,708.68. In this light, respondent must be paid the cost for the additional elevator; otherwise, it will constitute unjust enrichment on the part of petitioner.[18]

Dissatisfied, petitioner moved for reconsideration,[19] which was, however, denied in a Resolution[20] dated June 25, 2014; hence, this petition.

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[14] See Brief for the Appellant dated February 22, 2012; *id.* at 165-182.

[15] *Id.* at 34-43.

[16] *Id.* at 42.

[17] See *id.* at 41-42.

[18] See *id.* at 37-41.

[19] See motion for reconsideration dated January 21, 2014; CA *rollo*, pp. 143-154.

[20] See *rollo*, p. 45.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ordered petitioner to pay the following amounts to respondent: (*a*) balance of the retention fee amounting to ₱40,880.00; (*b*) additional deduction of ₱227,500.00 due to purported substandard work of the latter; and (*c*) the cost of an additional scenic elevator enclosure amounting to ₱1,123,708.68.

The Court's Ruling

The petition is denied.

At the outset, it must be stressed that a petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable,[21] absent any of the exceptions recognized by case law.[22] This rule is rooted on the doctrine

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[21] See *Uyboco v. People*, G.R. No. 211703, December 10, 2014, citing *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[22] "As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. In many instances, however, this Court has laid down exceptions to this general rule, as follows:

(1) When the factual findings of the [CA] and the trial court are contradictory;

(2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(3) When the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd or impossible;

(4) When there is grave abuse of discretion in the appreciation of facts;

(5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) When the judgment of the [CA] is premised on misapprehension of facts;

(7) When the [CA] failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8) When the findings of fact are themselves conflicting;

(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

that findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored.[23] Hence, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the CA, are binding and conclusive upon this Court.[24]

In the instant case, both the RTC and the CA found that petitioner had issued to respondent a Certificate of Completion and Acceptance[25] signifying that it had already accepted respondent's work as up to par. As correctly pointed out by the RTC and the CA, this factual finding already estops petitioner from withholding the amounts due to respondent's purported substandard workmanship. It is settled that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it,"[26] as in this case. Therefore, it is but proper that petitioner remit to respondent the amounts of ₱40,880.00 and ₱227,500.00 it withheld from the latter.

On the other hand, anent the issue of whether or not petitioner is liable to respondent in the amount of ₱1,123,708.68 representing the cost of an additional scenic elevator enclosure, the RTC

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(10) When the findings of fact of the [CA] are premised on the absence of evidence but such findings are contradicted by the evidence on record."

(*Treñas v. People*, 680 Phil. 368, 378 [2012], citing *Salcedo v. People*, 400 Phil. 1302, 1308-1309 [2000].)

[23] See *Uyboco v. People*, *supra* note 21, citing *Navallo v. Sandiganbayan*, G.R. No. 97214, July 18, 1994, 234 SCRA 175, 185-186.

[24] See *id*., citing *Plameras v. People*, G.R. No. 187268, September 4, 2013, 705 SCRA 104, 122.

[25] Records, Vol. 1, pp. 387-388.

[26] *Pasion v. Melegrito*, 548 Phil. 302, 311 (2007), citing Section 2 (a), Rule 131 of the Rules of Court.

and the CA had different factual findings which then led to different conclusions. As already adverted to, the RTC found the subject contract to be fixed lump sum in nature and, thus, adjudged petitioner liable only for the amount of ₱29,000,000.00; on the other hand, the CA held otherwise, resulting in its ruling that petitioner should be held liable for the cost of the additional scenic elevator enclosure. In view of the conflicting factual findings of the RTC and the CA on this matter, the Court is constrained to make its own determination as to whether or not the subject contract is fixed lump sum in nature, and thereafter, resolve if petitioner is indeed liable for the amount of ₱1,123,708.68.[27]

Fixed lump sum contracts are governed by Article 1724 of the Civil Code, which reads:

> Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> (1) Such change has been authorized by the proprietor in writing; and
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> (2) The additional price to be paid to the contractor has been determined in writing by both parties.

In a fixed lump sum contract, the project owner agrees to pay the contractor a specified amount for completing a scope

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[27] "Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory." (*Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532 and 172544-45, November 20, 2013, 710 SCRA 371, 386, citing *Recio v. Heirs of Spouses Altamirano*, G.R. No. 182349, July 24, 2013, 702 SCRA 137, 147.)

of work involving a variety of unspecified items of work without requiring a cost breakdown. The contractor estimates the project cost based on the scope of work and schedule and considers probable errors in measurement and changes in the price of materials.[28] Otherwise stated, in fixed lump sum contracts, the project owner's liability to the contractor is ***generally*** limited to what is stipulated therein.

However, it must be clarified that Article 1724 of the Civil Code does not preclude the parties from stipulating on additional works to the project covered by said fixed lump sum contract which would entail added liabilities on the part of the project owner. In fact, the said provision allows contractors to recover from project owners additional costs in fixed lump sum contracts, as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications, provided that there exists: (*a*) a written authority from the developer or project owner ordering or allowing the written changes in work; ***and*** (*b*) written agreement of the parties with regard to the increase in price or cost due to the change in work or design modification. Jurisprudence instructs that compliance with these two (2) requisites is a ***condition precedent*** for recovery and hence, the absence of one or the other condition bars the claim for additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-mentioned.[29]

In the instant case, pertinent portions of the subject contract read:

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[28] *Leighton Contractors Phils., Inc. v. CNP Industries, Inc.*, 628 Phil. 547, 560 (2010).

[29] See *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, 713 SCRA 455, 466-467.

ARTICLE I –SCOPE OF WORK

1.1 The CONTRACTOR shall furnish **all materials, labor, equipment, supervision and all other accessories, fixings and incidentals necessary to complete the Supply and Installation of Metal Works Requirements** (referred to either as the "Contract Works" or the "Works") and hand-over the works to Filinvest in accordance with the Approved Plans, Technical Specifications, General Conditions of Contract and other Bid Documents all included in the Notice of Award dated 30 April 1997 (Annex A hereof) inclusive of all its attachments and Annexes all of which are made integral parts of this Agreement by reference.

ARTICLE II – CONTRACT PRICE

2.1 **For and in consideration of the services to be rendered by the CONTRACTOR as herein above specified, FILINVEST shall pay the CONTRACTOR the Lump Sum Contract Price of PESOS: TWENTY NINE MILLION AND 00/100 (₱29,000,000.00)**, inclusive of Value Added Tax (VAT), in the manner set forth under Article III hereof (the "Manner of Payment").

x x x x x x x x x[30] (Emphases and underscoring supplied)

In this relation, key provisions of the General Conditions state:

ARTICLE IX – VARIATION ORDERS

1.0 Site Instruction: **Variation or Change Orders and Extra Works shall be performed by the CONTRACTOR only upon the issuance of official Site Instruction from the Engineer or from any duly designated representative of FILINVEST.** Before issuing an official variation instruction, FILINVEST may require the CONTRACTOR to submit within ten (10) days a detailed account of the time and cost implications of complying with the proposed variation order. FILINVEST has the sole prerogative to award the variation order to the CONTRACTOR, or to any other party, whichever is advantageous to FILINVEST. Any work performed without any accompanying official site instruction and which is not part of the original scope of work shall not be paid by FILINVEST.

[30] *Rollo*, p. 60.

x x x x x x x x x

3.0 Valuation of Variation or Change Orders: The value of all variations shall be initiated by the CONTRACTOR subject to acceptance and approval by FILINVEST in accordance with the following guidelines:

3.1. **Where a Schedule of Rates (upon which the Lump Sum Price or Unit Priced Contract Sum was based) has been made part of the Contract, the prices in the said Unit Rates be used in the valuation of variation orders.**

x x x x x x x x x[31] (Emphases and underscoring supplied)

A reading of the subject contract clearly reveals that it is fixed lump sum in nature as the parties agreed that respondent shall "furnish all materials, labor, equipment, supervision and all other accessories, fixings and incidentals necessary to complete the Supply and Installation of Metal Works Requirements" of petitioner's Filinvest Festival Supermall. In exchange for such works, respondent shall be remunerated "the Lump Sum Contract Price of PESOS: TWENTY NINE MILLION AND 00/100 (₱29,000,000.00)."

As already explained above, the fixed lump sum nature of the subject contract did not preclude the parties from agreeing on additional works and/or changes to the project. Pursuant to the rule laid down by Article 1724 of the Civil Code, the General Conditions allowed the parties to stipulate on extra works through the issuance of Site Instructions, as what happened in this case when petitioner issued two (2) Site Instructions, dated August 1, 1997[32] and January 23, 1998,[33] pertaining to the construction of an additional scenic elevator enclosure in the project. In this regard, and as correctly pointed out by the CA, the valuation of this additional work was lifted from the Bill of Quantities[34] previously agreed upon by the parties and was put into writing as evidenced by the

[31] *Id*. at 88.

[32] Records, Vol. 2, p. 622.

[33] *Id*. at 622-A.

[34] *Id*. at 626-627.

Cost Breakdown for Claim of Change Orders[35] and the Material Quantity Breakdown for Scenic Elevator Enclosure[36] submitted by respondent to petitioner. The foregoing shows that: (*a*) there was a written authority from petitioner for respondent to proceed with the construction of the additional scenic elevator enclosure; and (*b*) the parties have a written agreement as to the proper valuation of such additional works to be made on the project. As the construction of an additional scenic elevator enclosure was covered by a valid extra work order to the subject contract, respondent is entitled to recover from petitioner the cost of the same amounting to ₱1,123,708.68.

On a final note, all the amounts due to respondent – namely the: (*a*) balance of the retention fee amounting to ₱40,880.00; (*b*) additional deduction of ₱227,500.00 due to purported substandard work of the latter; and (*c*) the cost of an additional scenic elevator enclosure amounting to ₱1,123,708.68 – should be subject to legal interest at the rate of twelve percent (12%) per annum from extrajudicial demand until June 30, 2013 and six percent (6%) per annum thereafter until full payment, in accordance with recent jurisprudence.[37]

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated December 27, 2013 and the Resolution dated June 25, 2014 of the Court of Appeals in CA-G.R. CV No. 97025 are hereby **AFFIRMED** with **MODIFICATION** imposing legal interest at the rate of twelve percent (12%) per annum on all monetary awards from extrajudicial demand until June 30, 2013 and six percent (6%) per annum thereafter until full payment.

SO ORDERED.

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

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[35] *Id.* at 624.

[36] *Id.* at 625.

[37] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456.

FIRST DIVISION

[G.R. No. 213696. December 9, 2015]

QUANTUM FOODS, INC., *petitioner, vs.* **MARCELINO ESLOYO and GLEN MAGSILA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPEAL FROM THE LABOR ARBITER'S RULING TO THE NLRC IN CASE OF A JUDGMENT INVOLVING A MONETARY AWARD; POSTING OF CASH OR SURETY BOND REQUIRED IN THE AMOUNT EQUIVALENT TO THE MONETARY AWARD IN THE JUDGMENT APPEALED FROM AND A CERTIFICATE OF NON-FORUM SHOPPING.—** In labor cases, the law governing appeals from the LA's ruling to the NLRC is Article 229 of the Labor Code. x x x **In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from**. x x x In this relation, Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC (the Rules) enumerates the requisites for the perfection of appeal. [Thus,] The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) **verified by the appellant himself** in accordance with Section 4, Rule 7 of the Rules of Court, as amended; x x x and 5) **accompanied by** i) proof of payment of the required appeal fee; ii) **posting of a cash or surety bond** as provided in Section 6 of this Rule; iii) **a certificate of non-forum shopping**; and iv) proof of service upon the other parties. b) **A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.**

2. **ID.; ID.; ID.; ID.; ID.; CERTIFICATION REQUIREMENT RELAXED IN THE PRESENCE OF PLAUSIBLE MERIT TO THE CASE.—** In the present case, it is apparent that the plausible merit of the case was the "special circumstance" or "compelling reason" that prompted the NLRC to relax the certification requirement and give due course to QFI's appeal as it, in fact, arrived at a contrary

ruling from that of the LA. It is well to emphasize that technical rules are not binding in cases submitted before the NLRC. In fact, labor officials are enjoined to use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process. Consequently, the NLRC cannot be faulted for relaxing its own rules in the interest of substantial justice.

3. ID.; ID.; ID.; ID.; ID.; CASH OR SURETY BOND; MOTION TO REDUCE BOND MAY BE ALLOWED ON MERITORIOUS GROUND AND AFTER A REASONABLE AMOUNT IN RELATION TO THE MONETARY AWARD HAS BEEN POSTED.— [T]he posting of a cash or surety bond is **indispensable** to the perfection of an appeal in cases involving monetary awards from the decision of the LA. In several cases, the Court has relaxed this stringent requirement whenever justified. Thus, the Rules — specifically Section 6, Rule VI — thereof, allow the reduction of the appeal bond upon a showing of: ***(a)*** **the existence of a meritorious ground for reduction, and *(b)* the posting of a bond in a reasonable amount in relation to the monetary award.** x x x The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal. In this regard, it bears stressing that the reduction of the bond provided thereunder is not a matter of right on the part of the movant and its grant still lies within the sound discretion of the NLRC. x x x In *Nicol v. Footjoy Industrial Corp*., the Court [ruled:] "[T]he bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period." x x x Case law has held that for purposes of justifying the reduction of the appeal bond, **the merit referred to may pertain to *(a) an appellant's lack of financial capability to pay the full amount of the bond,* or (b) *the merits of the main appeal*** x x x As to what constitutes "a reasonable amount of bond" that must accompany the motion to reduce bond in order to suspend the period to perfect an appeal, the Court, in *McBurnie v. Ganzon*,

pronounced: x x x **all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission.** In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

4. ID.; ID.; ID.; ID.; ID.; DISCRETION OF THE NLRC TO GRANT OR DENY MOTION TO REDUCE BOND, UPHELD IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— It should be emphasized that the NLRC has full discretion to grant or deny the motion to reduce bond, and its ruling will not be disturbed unless tainted with grave abuse of discretion. Verily, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
Bedona Bedona Cabado Alim & Endonila Law Offices 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 January 18, 2011 and the Resolution[3] dated

[1] *Rollo*, pp. 9-31.

[2] *Id*. at 38-47. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Edgardo L. delos Santos and Eduardo B. Peralta,Jr. concurring.

[3] *Id*. at 50-51. Penned by Associate Justice Edgardo L. delos Santos with Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez concurring.

July 4, 2014 of the Court of Appeals, Cebu City (CA) in CA-G.R. CEB-SP No. 04622, which reversed and set aside the Decision[4] dated February 20, 2009 and the Resolution[5] dated July 10, 2009 of the National Labor Relations Commission (NLRC) in NLRC VAC No. 08-000526-2008, thereby reinstating the Decision[6] dated December 27, 2007 of the Labor Arbiter (LA), finding respondents Marcelino Esloyo (Esloyo) and Glen Magsila (Magsila) to have been illegally dismissed.

The Facts

Petitioner Quantum Foods, Inc. (QFI) is a domestic corporation engaged in the distribution and selling of food products nationwide, with principal office located in Brgy. Merville, Parañaque City. It hired Esloyo as Major Accounts Representative on December 14, 1998, whose consistent good performance led to successive promotions, until his promotion to the position of Regional Sales Manager for Visayas and Mindanao in 2004.[7] On the other hand, it hired Magsila as Key Accounts Representative for the Panay Area on March 1, 2005 on a probationary status and gave him a "permanent" status on August 31, 2005.[8] In the course of their employment, Esloyo and Magsila were each required to post a cash bond in the amount of ₱10,000.00 and ₱7,000.00, respectively.[9]

In 2006, QFI decided to reorganize its sales force nationwide following a drastic drop in net income in 2005, and Magsila was among those retrenched.[10] In a letter[11] dated February 13,

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[4] *Id*. at 142-160. Penned by Commissioner Oscar S. Uy with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon concurring.

[5] *Id*. at 174-175.

[6] *Id.* at 111-128. Penned by Executive Labor Arbiter Danilo C. Acosta.

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

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

[9] *Id*. at 113 and 119.

[10] *Id*. at 98.

[11] *Id.* at 107.

2006, Magsila was informed of his termination effective March 31, 2006, given the option not to report for work beginning February 27, 2006, and advised to turn over his responsibilities and clear his accountabilities to facilitate the release of his final pay. The corresponding Establishment Termination Report[12] of the retrenched employees was likewise submitted to the Department of Labor and Employment. However, Magsila's final pay and other benefits were not released due to alleged discovery of unauthorized/undocumented deductions, which he purportedly failed to explain.[13]

Meanwhile, in response to several anonymous complaints against Esloyo for alleged misbehavior and violations of various company rules and regulations, such as sexual harassment, misappropriation of company funds/property, falsification/padding of reports and serious misconduct, QFI's auditor, Vilma A. Almendrala, conducted an audit/investigation in Iloilo City on March 13 to 18, 2006,[14] and submitted an Audit Report[15] dated March 23, 2006 detailing her findings. A Show Cause Memorandum[16] dated March 24, 2006 (March 24, 2006 Show Cause Memorandum) was thereafter issued by QFI Human Resources (HR) Manager Rogelio Ma. J. dela Cruz (dela Cruz), directing Esloyo to explain.

Esloyo submitted his written explanation denying the charges,[17] which QFI found to be unsatisfactory.[18] Consequently, in a letter[19] dated March 31, 2006, Esloyo was informed of his termination from work effective April 3, 2006 on the ground

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[12] *Id*. at 105-106.

[13] *Id*. at 23.

[14] *Id*. at 53 and 65.

[15] *Id*. at 60-64.

[16] *Id*. at 65-67.

[17] See letter dated March 25, 2006; *id*. at 68-70.

[18] *Id*. at 53.

[19] *Id*. at 71-74.

of loss of trust and confidence due to his numerous violations of the company rules and regulations.

Aggrieved, Esloyo and Magsila (respondents) filed separate complaints for illegal dismissal with money claims against QFI, its President/General Manager, Robert N. Suarez, and its HR Manager, De la Cruz, before the NLRC, docketed as SRAB VI, Case Nos. 04-50116-2006 and 07-50239-2006, respectively, which were subsequently consolidated.[20] They also impleaded Dole Philippines, Inc. (Dole) as party to the case, claiming that said company required them to perform additional tasks that were necessary and desirable for its operations, and that Dole, as well as its Executive personnel had created and organized QFI, and thus, should be held jointly and solidarily liable with QFI for respondents' claims.[21]

Esloyo asserted that his dismissal was illegal, claiming that: (*a*) the charges were all fabricated; (*b*) no formal investigation was conducted; and (*c*) he was not given the opportunity to confront his accusers; adding too that prior to the March 24, 2006 Show Cause Memorandum, he received an e-mail memorandum directing him to report to the head office for re-assignment but was, instead, placed on floating status.[22] Magsila, on the other hand, averred that there was no valid retrenchment as the losses claimed by QFI were unsubstantiated and that he was merely replaced.[23]

For its part, QFI maintained that respondents' dismissals were valid, hence, it is not liable for their money claims.[24] On the other hand, Dole denied any employer-employee relationship with respondents.[25]

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[20] *Id.* at 111.

[21] *Id.* at 119.

[22] *Id.* at 114.

[23] *Id.* at 119.

[24] *Id.* at 54-58 and 99-101.

[25] *Id.* at 120.

The LA Ruling

In a Decision[26] dated December 27, 2007, the LA found respondents to have been illegally dismissed, and ordered QFI to pay them their respective backwages, 13th month pay, unpaid salaries, separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service, and refund of their cash bonds, or a total monetary judgment of ₱1,817,856.71,[27] plus 10% attorney's fees.

The LA held that Esloyo's dismissal was tainted with malice and bad faith, finding that: (*a*) he was not given the opportunity to refute the charges leveled against him, as instead of conducting an administrative investigation, QFI ordered his re-assignment and thereafter placed him on "floating status"; and (*b*) the audit report submitted was based on unverified statements. The LA likewise found no substantial evidence to support the charges against Esloyo, and thus, ruled that the claim of loss of trust and confidence was without basis.[28]

In the same vein, the LA declared Magsila's dismissal to be illegal, holding that there could be no valid retrenchment since a replacement was hired even before the effectivity of the latter's dismissal, noting too, that the dismissal was effected only after he had acted as witness for Esloyo in the sexual harassment charge.[29]

On the other hand, Dole was deleted as party to the case, upon a finding that it has no employer-employee relationship with respondents; while the impleaded QFI officials were absolved from personal liability.[30]

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[26] *Id.* at 111-128.

[27] Monetary award to

Esloyo	₱1,451,464.22 (*id.* at 127)
Magsila	366,392.49 (*id.* at 128)
Total monetary award	**₱1,817,856.71**

[28] *Id.* at 125-126.

[29] *Id.* at 126.

[30] *Id.* at 127.

Dissatisfied, QFI filed its Notice of Appeal and Memorandum of Appeal[31] before the NLRC on February 8, 2008, accompanied by: (*a*) a Motion to Reduce Bond[32] averring that it was encountering difficulty raising the amount of the bond and finding an insurance company that can cover said amount during the short period of time allotted for an appeal; and (*b*) a cash bond in the amount of ₱400,000.00 (partial bond).[33]

Respondents filed a motion to dismiss the appeal for QFI's failure: (*a*) to attach a Verification and Certification of Non-Forum Shopping as required by the New Rules and Procedure of the NLRC; and (*b*) to post a bond in an amount equivalent to the monetary judgment as mandated by law.[34]

QFI thereafter moved to admit its Verification/Certification for Non-Forum Shopping and related documents, explaining that the failure to attach said documents was due to the inadvertence of its counsel who was just recovering from the open cholecystectomy performed on him, and that the appeal was based on meritorious grounds. Subsequently, but before the NLRC could act on the Motion to Reduce Bond, it posted a surety bond from an accredited insurance company fully covering the monetary judgment, which respondents vehemently opposed.[35]

The NLRC Ruling

In a Decision[36] dated February 20, 2009, the NLRC denied respondents' motion to dismiss and gave due course to QFI's appeal, holding that: (*a*) the lack of verification was a formal defect that could be cured by requiring an oath;[37] (*b*) the belated

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[31] *Id.* at 129-138.

[32] *Id.* at 139-140.

[33] *Id.* at 144.

[34] *Id.* at 143.

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

[36] *Id.* at 142-160.

[37] *Id.* at 145.

filing of the certificate of non-forum shopping may be allowed under exceptional circumstances as technical rules of procedure should be used to promote, not frustrate justice;[38] and (*c*) there was substantial compliance with the bond requirement, and merit in QFI's appeal that would justify a liberal application of the requirement on the timely filing of the appeal bond.[39]

Contrary to the LA's ruling, the NLRC held that respondents were not illegally dismissed.[40] It gave credence to the audit report which showed the various infractions committed by Esloyo in violation of the company rules and regulations, and in breach of the confidence reposed on him, warranting his dismissal.[41] It also found substantial evidence to support the losses suffered by QFI, and thus, declared Magsila's dismissal to prevent losses as a valid exercise of the management's prerogative.[42]

Consequently, the NLRC deleted the awards of backwages, 13th month pay, and attorney's fees in favor of respondents for lack of basis, but sustained: (*a*) the award of separation pay in favor of Magsila who was dismissed for an authorized cause; and (*b*) the refund of respondents' cash bonds in the absence of proof that the same had been returned by QFI.[43]

Respondents filed a motion for reconsideration,[44] which was denied in a Resolution[45] dated July 10, 2009, prompting them to elevate the matter on *certiorari* before the CA.[46]

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[38] *Id*. at 145-146.

[39] *Id*. at 146.

[40] *Id*. at 153.

[41] *Id*.

[42] *Id*. at 158.

[43] *Id*. at 158-159.

[44] Dated May 21, 2009; *id*. at 161-172.

[45] *Id*. at 174-175.

[46] See Petition for *Certiorari* dated October 16, 2009; *id*. at 176-203.

The CA Ruling

In a Decision[47] dated January 18, 2011, the CA reversed and set aside the NLRC's ruling and reinstated the LA's Decision. It ruled that QFI's failure to post the required bond in an amount equivalent to the monetary judgment impeded the perfection of its appeal, and rendered the LA's Decision final and executory.[48] Thus, the NLRC was bereft of jurisdiction and abused its discretion in entertaining the appeal.[49] It also held that the posting of the partial bond together with the Motion to Reduce Bond did not stop the running of the period to perfect the appeal, considering that: (*a*) the grounds relied upon by QFI are not meritorious; and (*b*) the partial bond posted was not reasonable in relation to the monetary judgment.[50]

The CA further observed that the appeal filed on February 8, 2008 was plagued with several infirmities that effectively prevented its perfection, noting that: (*a*) there was no showing that de la Cruz, who filed/signed the petition, was authorized to represent QFI and sign the verification; and (*b*) it was unaccompanied by a certificate of non-forum shopping. Accordingly, it found no compelling reason to justify the relaxation of the rules.[51]

Undeterred, QFI filed a motion for reconsideration[52] which was denied in a Resolution[53] dated July 4, 2014; hence, this petition.

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[47] *Id*. at 38-47.

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

[49] *Id*. at 44.

[50] *Id*.

[51] *Id*. at 43-46.

[52] Dated February 15, 2011; *id*. at 246-262.

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

The Issue Before the Court

The central issue for the Court's resolution is whether or not the CA erred in ascribing grave abuse of discretion on the part of the NLRC in giving due course to QFI's appeal.

The Court's Ruling

There is merit in the petition.

In labor cases, the law governing appeals from the LA's ruling to the NLRC is Article 229[54] of the Labor Code which provides:

ART. 229. **Appeal.** — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is a *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x x x x x x (Emphasis and underscoring supplied)

[54] Formerly Article 223. Department Advisory No. 01, Series of 2015, on Renumbering of the Labor Code of the Philippines, as Amended.

In this relation, Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC[55] (the Rules) enumerates the requisites for the perfection of appeal, *viz.*:

> Section 4. *Requisites for Perfection of Appeal.* — a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) **verified by the appellant himself** in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) **accompanied by** i) proof of payment of the required appeal fee; ii) **posting of a cash or surety bond** as provided in Section 6 of this Rule; iii) **a certificate of non-forum shopping;** and iv) proof of service upon the other parties.
>
> b) **A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.**
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> x x x x x x x x x (Emphases supplied)

Notably, while QFI timely filed its Notice of Appeal and Memorandum of Appeal, it was only accompanied by a partial bond with a Motion to Reduce Bond, and not a bond in an amount equivalent to the monetary judgment, the effects of which will be discussed later. The appeal likewise suffered from the following deficiencies, *inter alia*: (*a*) the verification was signed by QFI HR Manager dela Cruz, without the requisite board resolution authorizing him to sign for and in behalf of QFI; and (*b*) it was unaccompanied by a Certificate of Non-Forum Shopping. Nonetheless, QFI subsequently submitted its Verification/Certification of Non-Forum Shopping and related documents, explaining that the failure to attach said documents was due to the inadvertence of its counsel who was then recuperating from the open cholecystectomy performed on him, and that the appeal was based on meritorious grounds.[56]

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[55] The applicable NLRC Rules of Procedure as QFI's Notice of Appeal was filed on February 8, 2008.

[56] *Rollo*, p. 143.

In *China Banking Corp. v. Mondragon Int'l. Phils., Inc.*,[57] the Court had the occasion to rule that the subsequent submission of proof of authority to act on behalf of a petitioner corporation justifies the relaxation of the Rules for the purpose of allowing its petition to be given due course.[58] Besides, the 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 or tribunal may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules,[59] as the NLRC did.

On the other hand, the certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. However, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.[60]

In the present case, it is apparent that the plausible merit of the case was the "special circumstance" or "compelling reason"[61] that prompted the NLRC to relax the certification requirement and give due course to QFI's appeal as it, in fact, arrived at a contrary ruling from that of the LA. It is well to emphasize that technical rules are not binding in cases submitted before the NLRC. In fact, labor officials are enjoined to use every and reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due

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[57] 511 Phil. 760 (2005).

[58] *Id.* at 766, citing *Pascual and Santos, Inc. v. Members of the Tramo Wakas Neighborhood Assoc., Inc.*, 485 Phil. 113, 122 (2004).

[59] *Medado v. Heirs of the Late Antonio Consing*, 681 Phil. 536, 547 (2012).

[60] See *People v. De Grano*, 606 Phil. 547, 563 (2009).

[61] See *Torres v. Specialized Packaging Development Corporation*, 477 Phil. 540, 554 (2004).

process.[62] Consequently, the NLRC cannot be faulted for relaxing its own rules in the interest of substantial justice.

Coming now to the bond requirement, while it has been settled that the posting of a cash or surety bond is **indispensable** to the perfection of an appeal in cases involving monetary awards from the decision of the LA,[63] in several cases,[64] the Court has relaxed this stringent requirement whenever justified. Thus, the Rules — specifically Section 6, Rule VI — thereof, allow the reduction of the appeal bond upon a showing of: ***(a)*** **the existence of a meritorious ground for reduction, and** ***(b)*** **the posting of a bond in a reasonable amount in relation to the monetary award,** to wit:

> SEC. 6. *Bond.* — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.
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> x x x x x x x x x
>
> **No motion to reduce bond shall be entertained <u>except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.</u>**

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[62] *Surigao del Norte Electric Cooperative, Inc. v. Gonzaga*, G.R. No. 187722, June 10, 2013, 698 SCRA 103, 117-118. See also Article 227 of the Labor Code, formerly Article 223. Department Advisory No. 01, Series of 2015; Section 10, Rule VI of the NLRC Rules of Procedure.

[63] *Philippine Touristers, Inc. v. MAS Transit Workers Union-Anglo-KMU*, G.R. No. 201237, September 3, 2014, 734 SCRA 298, 309-310.

[64] See *Beduya v. Ace Promotion and Marketing Corporation*, G.R. No. 195513, June 22, 2015, citing *Grand Asian Shipping Lines, Inc. v. Galvez*, G.R. No. 178184, January 29, 2014, 715 SCRA 1; *Mendoza v. HMS Credit Corporation*, G.R. No. 187232, April 17, 2013, 696 SCRA 794; *Pasig Cylinder Manufacturing Corporation v. Rollo*, 644 Phil. 588 (2010); *Nicol v. Footjoy Industrial Corporation*, 555 Phil. 275 (2007); *Nueva Ecija I Electric Cooperative, Inc. v. NLRC*, 380 Phil. 44 (2000); *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013 (1998); *Fernandez v. NLRC*, 349 Phil. 65 (1998); and *Manila Mandarin Employees Union v. NLRC*, 332 Phil. 354 (1996).

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.[65] (Emphasis and underscoring supplied)

In this regard, it bears stressing that the reduction of the bond provided thereunder is not a matter of right on the part of the movant and its grant still lies within the sound discretion of the NLRC upon a showing of meritorious grounds and the reasonableness of the bond tendered under the circumstances.[66] The requirement on the existence of a "meritorious ground" delves on the worth of the parties' arguments, taking into account their respective rights and the circumstances that attend the case.[67]

In *Nicol v. Footjoy Industrial Corp.*,[68] the Court summarized the guidelines under which the NLRC must exercise its discretion in considering an appellant's motion for reduction of bond in this wise:

"[T]he bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period."[69]

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[65] *Philippine Touristers, Inc. v. MAS Transit Workers Union-Anglo-KMU, supra* note 63, at 310.

[66] *Id.*

[67] *McBurnie v. Ganzon*, G.R. Nos. 178034, 178117, and 186984-85, October 17, 2013, 707 SCRA 646, 679.

[68] 555 Phil. 275 (2007).

[69] *Id.* at 292.

Here, QFI posted a partial bond in the amount of ₱400,000.00, or more than twenty percent (20%) of the monetary judgment, within the reglementary period to appeal, together with the Motion to Reduce Bond anchored on its averred difficulty in raising the amount of the bond and searching for an insurance company that can cover said amount within the short period of time to perfect its appeal. Before the NLRC could even act on the Motion to Reduce Bond, QFI posted a surety bond from an accredited insurance company covering fully the judgment award.

However, the CA held that the grounds relied upon by QFI are not meritorious, and that the partial bond posted was not reasonable in relation to the monetary judgment.

Case law has held that for purposes of justifying the reduction of the appeal bond, **the merit referred to may pertain to *(a) an appellant's lack of financial capability to pay the full amount of the bond,* or *(b) the merits of the main appeal*** such as when there is a valid claim that there was no illegal dismissal to justify the award, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.[70]

In this case, the NLRC held that a liberal application of the requirement on the timely filing of the appeal bond is justified, finding that (*a*) the posting of a ₱400,000.00 cash bond within the reglementary period to appeal and the subsequent posting of a surety bond constitute substantial compliance of the bond requirement; and (*b*) there is merit in QFI's appeal.

As to what constitutes "a reasonable amount of bond" that must accompany the motion to reduce bond in order to suspend the period to perfect an appeal, the Court, in *McBurnie v. Ganzon*,[71] pronounced:

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[70] *McBurnie v. Ganzon, supra* note 67 at 679-680.

[71] *Id*.

To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, **all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission.** In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.[72] (Emphasis and underscoring supplied)

Hence, the posting of a ₱400,000.00 cash bond equivalent to more than 20% of the monetary judgment, together with the Motion to Reduce Bond within the reglementary period was sufficient to suspend the period to perfect the appeal. The posting of the said partial bond coupled with the subsequent posting of a surety bond in an amount equivalent to the monetary judgment also signified QFI's good faith and willingness to recognize the final outcome of its appeal.[73]

In determining the reasonable amount of appeal bonds, however, the Court primarily considers the merits of the motions and the appeals.[74] Thus, in *Rosewood Processing, Inc. v. NLRC,*[75] the Court considered the posting of a ₱50,000.00 bond together with the motion to reduce bond as substantial compliance with the legal requirements of an appeal from a ₱789,154.39 monetary award "[c]onsidering the clear merits which appear, *res ipsa loquitor*, in the appeal

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[72] *Id.* at 678-679.

[73] See *id.* at 677.

[74] *Id.* at 684.

[75] 352 Phil. 1013 (1998).

from the labor arbiter's Decision and the petitioner's substantial compliance with rules governing appeals."[76]

It should be emphasized that the NLRC has full discretion to grant or deny the motion to reduce bond,[77] and its ruling will not be disturbed unless tainted with grave abuse of discretion. Verily, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction,[78] which clearly is not extant with respect to the NLRC's cognizance of QFI's appeal. Far from having gravely abused its discretion, the NLRC correctly preferred substantial justice over the rigid and stringent application of procedural rules. This, by all means, is not a case of grave abuse of discretion calling for the issuance of a writ of *certiorari*,[79] warranting the reversal of the CA's ruling granting the *certiorari* petition and the reamand of the case to the CA for appropriate action.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 18, 2011 and the Resolution dated July 4, 2014 of the Court of Appeals, Cebu City in CA-G.R. CEB-SP No. 04622 are hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the CA for appropriate action.

SO ORDERED.

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

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[76] *Id.* at 1031.

[77] *Garcia v. KJ Commercial*, 683 Phil. 376, 389 (2012).

[78] *Philippine Touristers, Inc. v. MAS Transit Workers Union-KMU, supra* note 63, at 313.

[79] See *Aujero v. Phil. Communications Satellite Corp.,* 679 Phil. 463, 477-478 (2012).

THIRD DIVISION

[G.R. No. 215201. December 9, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARK ANTHONY ROAQUIN *y* NAVARRO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDELINES.—** This Court has often reiterated the guidelines in addressing the issue of credibility of witnesses. First, this Court gives the highest respect to the RTC's evaluation of the testimony of the witness, it having the distinct opportunity of observing the witness's demeanor on the stand. Second, absent substantial reasons, *i.e.* significant facts and circumstances, affecting the outcome of the case, that are shown to have been overlooked or disregarded, which would warrant the reversal of the RTC's evaluation, the appellate court is generally bound by the lower court's findings. Lastly, the rule is stringently applied when the CA affirms the lower court's ruling.

2. **CRIMINAL LAW; RAPE; DEFINITION AND PENALTIES.—** Article 266-A(1) and Article 266-B of the RPC defines and penalizes the crime of rape: ART. 266-A. *Rape, When and How Committed.* – Rape is committed – 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat or intimidation; b. When the offended party is deprived of reason or is otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; and d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. x x x ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

3. **ID.; ID.; NOT NEGATED BY FINDING OF HEALED LACERATIONS.—** As to the finding of healed and not fresh lacerations, it will not negate the commission of rape. It is settled

that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. AAA's injuries are reflected in the medico-legal report, particularly the presence of vaginal bleeding and multiple abrasions on her right arm. That appellant succeeded to have carnal knowledge of AAA with the use of force and without her consent consummates the crime of rape.

4. **REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONY.—** [A]ppellant's defense of denial and alibi are inherently weak and self-serving, especially if uncorroborated. Denial cannot prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is an appeal[1] from the February 19, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04698 which affirmed with modification appellant Mark Anthony Roaquin's conviction for the crime of rape as defined under Article 266-A of the Revised Penal Code, as amended, (RPC) in Criminal Case No. 07-2524 before the Regional Trial Court (RTC), Branch 136, Makati City.

On October 10, 2007, appellant was accused and charged with the crime of rape against AAA,[3] a 17-year-old minor.

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[1] CA *rollo*, pp. 104-105.

[2] *Rollo*, pp. 2-12. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante concurring.

[3] The victim's name was substituted pursuant to Section 44 of R.A. No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004," *People v. Cabalquinto*, 533 Phil. 703 (2006) and Section 40, A.M. No. 04-10-11-SC.

The Information[4] filed by the city prosecutor reads:

> The undersigned Prosecutor, on the basis of the sworn statement of complainant, [AAA], minor, 17 years old, a copy of which is hereto attached as Annex "A" and made an integral part hereof, accuses **MARK ANTHONY ROAQUIN y NAVARRO** of the crime of Rape, committed as follows:
>
> That on or about the 7th day of October, 2007, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of complainant [AAA], minor, 17 years old, without her consent and against her will.
>
> CONTRARY TO LAW.[5]

Appellant pleaded not guilty on arraignment.[6] After pre-trial terminated, trial on the merits ensued.

Prosecution's Version

Based on the testimonies of AAA, Dr. Mamerto Bernabe, Jr., and Ventura Dacanay Jr., at around 10 o'clock in the evening of October 7, 2007, AAA left the boarding house she was staying in to walk towards a canteen in Guadalupe, Makati City where she worked. On her way and near the billiard hall in Barangay South Cembo, a certain Marlon blocked her way and forced her to go inside the billiard hall where appellant, Kevin Sales and other friends of the appellant were present. The group urged her to drink substantial amounts of Emperador brandy which left her half asleep.

Disoriented AAA felt that she was led to the house of Kevin and brought inside a room where she fell asleep. When she woke up she saw Marlon on top of her. He had removed her shorts and underwear and placed his penis in her vagina. She tried to fight Marlon but she lost consciousness due to an asthma attack. By

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[4] Filed on October 17, 2007.

[5] Records, p. 1.

[6] *Id*. at 22.

the time she regained consciousness, she felt that someone was on top of her again. Because of the moonlight, she was able to identify appellant as the person violating her. She tried preventing appellant by kicking him but failed to do so since appellant bit her arm. Thereafter, AAA walked, bleeding, back to the boarding house.

She complained to the authorities the following day. On October 9, 2007, two days after the incident, she was examined by a medico-legal officer at the Philippine National Police Crime Laboratory. Results of the medical examination stated that AAA suffered multiple injuries on her right arm and deep-healed laceration at 9 o'clock position accompanied by vaginal bleeding. The report concluded that there was clear evidence of blunt penetrating trauma. It reads:

PHYSICAL INJURIES:

1. Ecchymosis, neck region, measuring 2 x 2 cm, 5cm left of the anterior midline;

2. Area of multiple abrasions, & single contusion, right arm, measuring 7 x 6 cm, along its anterior midline.

x x x x x x x x x

HYMEN: deep healed laceration at 9 o'clock position; presence of vaginal bleeding;

x x x x x x x x x

CONCLUSION: Genital examination shows clear evidence of blunt penetrating trauma. Barring unforeseen complication, the above-stated physical injuries are estimated to heal within 5-6 days.[7]

During trial, AAA identified appellant as her violator. She also related to the lower court that before taking the stand appellant's father threatened her.

Defense's Version

Appellant denied the allegations against him. As the defense's lone witness, appellant testified that he met AAA for the first

[7] *Id*. at 85.

time on October 7, 2007 while playing billiards with friends. Since it was the billiard owner's wife's birthday, someone gave AAA a drink which she took and drank. Shortly thereafter, she left the billiard hall. Appellant stayed for another two hours before going home. He called AAA's assertion a baseless claim. He stated that his father discovered that AAA, in order to extort money from others, filed cases for rape against other people which were later settled.

The RTC found appellant guilty beyond reasonable doubt of the crime of rape, thus:

> **WHEREFORE**, the Court renders judgment finding the accused Mark Anthony Roaquin **GUILTY** beyond reasonable doubt of the crime of rape by sexual intercourse. The Court sentences him to suffer the penalty of *reclusion perpetua*. The Court directs the accused to indemnify the complainant [AAA] in the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. No costs.
>
> SO ORDERED.[8]

On appeal, the CA affirmed with modification the RTC's decision. It found that AAA was also entitled to the award of exemplary damages. Thus:

> **WHEREFORE**, premises considered, the appeal is hereby **DENIED**. The appealed Decision dated September 29, 2010 of the Regional Trial Court (RTC), Branch 136 of Makati City in Criminal Case No. 07-2524 is hereby **AFFIRMED with MODIFICATION** as to the award of exemplary damages. Accordingly, the accused-appellant is hereby ordered to pay AAA the following: Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages.
>
> **SO ORDERED**.[9]

Hence, this appeal.

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[8] CA *rollo*, pp. 22-23. The Decision was penned by Presiding Judge Rico Sebastian D. Liwanag.

[9] *Rollo*, p. 11.

In its January 26, 2015 Resolution,[10] this Court required the parties to file their supplemental briefs, but both parties manifested[11] that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.

The issue for our consideration is whether the CA erred in affirming appellant's guilt beyond reasonable doubt.

Appellant pointed to AAA's inconsistent statements while testifying. Moreover, he points out that there is a disparity between AAA's testimony and the findings of the medical report. He argues that given that the examination was conducted two days after the supposed incident, lacerations sustained by AAA should have been fresh not healed.

We are not persuaded.

This Court has often reiterated the guidelines in addressing the issue of credibility of witnesses. First, this Court gives the highest respect to the RTC's evaluation of the testimony of the witness, it having the distinct opportunity of observing the witness's demeanor on the stand.[12] Second, absent substantial reasons, *i.e.* significant facts and circumstances, affecting the outcome of the case, that are shown to have been overlooked or disregarded, which would warrant the reversal of the RTC's evaluation, the appellate court is generally bound by the lower court's findings.[13] Lastly, the rule is stringently applied when the CA affirms the lower court's ruling.[14]

Here, appellant did not present any compelling reason to disturb the RTC and the CA's assessment of AAA's credibility. He merely attacks AAA's testimony for its supposed lack of detail without giving any additional evidence to buttress his contention. As we have stated, absent any substantial reasons that the court

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[10] *Id.* at 18-19.

[11] *Id.* at 24-26 and 28-30.

[12] *People v. Prodenciado*, G.R. No. 192232, December 10, 2014, p. 7.

[13] *Id.*

[14] *Id.*

has overlooked facts and circumstances this Court is bound by the RTC's evaluation of the witness's credibility especially since the CA has affirmed the finding.

We also agree with both CA and RTC that appellant is guilty beyond reasonable doubt of the crime of rape. Article 266-A(1) and Article 266-B of the RPC defines and penalizes the crime of rape:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx xxx xxx

ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

xxx xxx xxx

After a careful examination of the case's records, we find that the prosecution established that appellant had carnal knowledge of AAA under the circumstances described under Article 266-A(1). AAA consistently testified in a spontaneous and straightforward manner relative to the circumstances surrounding the incident. She stated:

Fiscal Matira:

> I will proceed now. In the evening of October 7, 2007, before 10 o'clock in the evening, do you still remember where you were?

A: Yes, sir.

Q: Please tell the Court where you were?

A: I just came from the boarding house, sir.

Q: Going to what place?

A: I was on my way to the place where I was working in a canteen in Guadalupe, sir.

Q: Were you able to reach the canteen?

A: No, sir.

Q: Why?

A: Because Marlon blocked my way, sir.

Q: In what place?

A: At the billiard hall, sir.

x x x x x x x x x

Q: You said you were blocked by Marlon in that billiard hall located at South Cembo, Makati City, will you please tell this Honorable Court how you were blocked by Marlon?

A: He forced me to go inside the billiard hall, sir.

Q: And because you were forced to go inside the billiard hall by Marlon, what did Marlon do after (sic) entered by means of force in that billiard hall?

A: He forced me to drink liquor, sir, emperador.

Q: While you were force[d] by Marlon to enter in that billiard hall and thereafter offered emperador, my question now is who was or were with you in that billiard hall together with Marlon, if there were any?

A: Mark Anthony Roaquin and Kevin Sales and some other *barkadas* of the [appellant], sir.

Q: How many bottles of *emperador* were consumed?

A: Two long bottles of emperador, sir.

x x x x x x x x x

Q: Of that two bottles of *emperador*, how much quantity were you able to consume at that time?

A: Because I do not drink too much liquor, sir, I can say that I was able to consume maybe half of the bottle of *emperador*, sir.

x x x x x x x x x

Q: After consuming that two bottles of *emperador*, what happened next?

A: I was already feeling dizzy and sleepy, sir inside the billiard hall[.]

Q: Considering that that was your condition at that time, what happened next?

A: Because I was already feeling dizzy and sleepy and that's why I fell half [a]sleep and that was the time I felt I was being ushered towards the house of Kevin Sales.

Q: Were you able to reach that house?

A: Yes, sir.

Q: Together with whom?

A: Marlon and his other barkadas.

Q: How about Mark and Kevin?

A: They are also with us, sir.

Q: After reaching the house of Kevin, what happened?

A: Marlon brought me directly [to] the room of Kevin.

Q: And after that what happened?

A: I fell asleep, [sir].

Q: And thereafter, what happened?

A: When I woke up, somebody was already on top of me.

Q: And after noticing that somebody was on top of you, what happened next?

A: My shortpants and underwear was being forced to be removed, sir.

Q: And what did you do when that person on top of you was forcing to remove [your] underwear and short?

A: I was trying to prevent him from doing it and I tried hitting him, sir.

Q: By means of what?

A: My hands, sir.

Q: After that what happened next?

A: I was already feeling weak, sir.

Q: And because you were feeling we[a]k, were you able to prevent Marlon?

A: No, sir.

Q: Why?

A: Because he was stronger than I am, sir.

Q: And because he was stronger, what do you mean?

A: I cannot prevent him, sir.

Q: And thereafter what happened?

A: I had an asthma [attack], sir.

Q: And because you were attacked by your asthma, what happened next?

A: I was feeling weaker and weaker and I finally fell asleep.

Q: And what did Marlon do to you?

x x x x x x x x x

Fiscal Matira:

You mean by rape, he forced you by inserting his private organ into [your] vagina?

A: Yes, sir.

Q: And after that what else happened?

A: Because of the asthma [attack] that I had had and because I [lost] consciousness, I overheard that there was somebody calling the name of Marlon.

x x x x x x x x x

Q: And what did Marlon do after being called?

A: He went out of the room, sir.

Q: And thereafter what happened?

A: Somebody went on top of me again, sir.

Q: And do you recognize that person?

A: Yes, sir.

Q: Who? What is the name?

A: Mark Anthony, sir.

Q: The person now being prosecuted and the one you pointed to awhile ago?

A: Yes, sir.

Q: And after noticing that Mark Anthony Roaquin was already on top of you, what else did you notice?

A: He inserted his penis into my vagina.

Q: Did you consent or not?

A: No, sir.

Q: In what way were you preventing insertion o[f] his private organ into your vagina?

A: Through my legs, sir, I was trying to prevent him from doing it.

Q: What else?

A: I cannot move my arms because he suddenly bit me, sir.

(at this juncture the witness is trying to demonstrate by pointing to her right arm)

Q: You mean he bit your right arm?

A: Yes, "*Kinagat niya po ako.*"

Q: Okay, who else went on top of you at that time, if any?

A: I could no longer remember, sir.

xxx xxx xxx

Q: After you were [raped], first by Marlon, second by Mark, what did you do?

A: I was crying, sir.

Q: At that time, what else did you do?

A: I was afraid but at the same time was very furious of what he had done to me, sir.[15]

The same narration was repeated by AAA on cross-examination and any minor discrepancies are negligible. As to the finding of healed and not fresh lacerations, it will not negate the commission of rape. It is settled that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape.[16] AAA's injuries are reflected in the medico-legal report, particularly the presence of vaginal bleeding and multiple abrasions on her right arm.[17] That appellant succeeded to have carnal knowledge of AAA with the use of force and without her consent conummates the crime.

Moreover, appellant's defense of denial and alibi are inherently weak and self-serving, especially if uncorroborated.[18] Denial cannot prevail over complainant's direct, positive and categorical asserion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[19]

WHEREFORE, the appeal is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[15] TSN, November 10, 2008, pp. 6-13.

[16] *People v. Bohol*, 415 Phil. 749, 760 (2001), citing *People v. Lerio*, G.R. No. 116729, January 31, 2000, 324 SCRA 76, 83; *People v. Juntilla*, 373 Phil. 351, 365 (1999).

[17] *Supra* note 7.

[18] *People v. Prodenciado, supra* note 12, at 14-15.

[19] *People v. Bonaagua*, 665 Phil. 750, 765 (2011).

[*] Designated additional Member per Raffle dated April 20, 2015.

FIRST DIVISION

[G.R. No. 215424. December 9, 2015]

ADINA B. MANANSALA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE OPEN FOR REVIEW.— [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. CRIMINAL LAW; REVISED PENAL CODE (RPC); FALSIFICATION OF PRIVATE DOCUMENTS UNDER ARTICLE 172 (2) IN RELATION TO ARTICLE 171 (4); ELEMENTS.— The elements of Falsification of Private Documents under Article 172 (2) of the RPC are: (*a*) that the offender committed any of the acts of falsification, except those in Article 171 (7) of the same Code; (*b*) that the falsification was committed in any private document; and (*c*) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage. On the other hand the elements of Falsification under Article 171 (4) of the RPC are as follows: (*a*) the offender makes in a public document untruthful statements in a narration of facts; (*b*) he has a legal obligation to disclose the truth of the facts narrated by him; and (*c*) the facts narrated by him are absolutely false.

3. ID.; ID.; ID.; PROPER PENALTY IN THE ABSENCE OF ANY MITIGATING CIRCUMSTANCE AND CONSIDERING PROVISIONS OF THE INDETERMINATE SENTENCE LAW.— [A]s there was no mitigating circumstance that would modify

Manansala's criminal liability in this case – and also taking into consideration the provisions of the Indeterminate Sentence Law – she must be sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.

4. ID.; EXEMPTING CIRCUMSTANCES; ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR; THE DURESS, FORCE, FEAR OR INTIMIDATION MUST BE PRESENT, IMMINENT AND IMPENDING, AND OF SUCH NATURE AS TO INDUCE A WELL-GROUNDED APPREHENSION OF DEATH OR SERIOUS BODILY HARM IF THE ACT BE DONE.— "Acting under an impulse of uncontrollable fear" is an exempting circumstance provided under Article 12 (6) of the [RPC]. [F]or such a circumstance to be appreciated in favor of an accused, the following elements must concur: (*a*) the existence of an uncontrollable fear; (*b*) that the fear must be real and imminent; and (*c*) the fear of an injury is greater than, or at least equal to, that committed. For such defense to prosper, the duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough.

APPEARANCES OF COUNSEL

Averill J. Amor for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 16, 2014 and the Resolution[3] dated October

[1] *Rollo*, pp. 3-20.

[2] *Id*. at 23-30. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

[3] *Id*. at 32-33.

7, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 34763, affirming the conviction of petitioner Adina B. Manansala (Manansala) for the crime of Falsification of Private Documents, defined and penalized under Article 172 (2), in relation to Article 171 (4), of the Revised Penal Code (RPC).

The Facts

On May 31, 1999, private complainant Kathleen L. Siy (Siy), former Vice President for Finance of Urban Finance and Leasing Corporation, now UMC Finance and Leasing Corporation (UMC), instructed her secretary, Marissa Bautista (Bautista), to withdraw *via* Automated Teller Machine (ATM) the amount of ₱38,000.00 from her Metrobank and Bank of the Philippine Islands bank accounts. However, Bautista was not able to make such withdrawal as the ATM was offline so she took it upon herself to get such amount from the petty cash custodian of UMC instead, but she forgot to inform Siy where she got the money. On June 9, 1999, UMC Finance Manager Violeta Q. Dizon-Lacanilao (Lacanilao) informed Siy that as per the Petty Cash Replenishment Report (subject report) of the same date prepared by UMC Petty Cash Custodian Manansala, she allegedly made a cash advance in the amount of ₱38,000.00 which remained unliquidated. It was only then that Siy found out what Bautista had done, and she immediately rectified the situation by issuing two (2) checks to reimburse UMC's petty cash account. As the checks were eventually encashed resulting in the replenishment of UMC's petty cash account, Lacanilao instructed Manansala to revise the subject report by deleting the entry relating to Siy's alleged cash advance, to which Manansala acceded. On June 11, 1999, Lacanilao reported the incident to UMC President Conrado G. Marty (Marty).[4]

Sometime in March 2000, Lacanilao instructed Manansala to retrieve the subject report, re-insert the entry relating to Siy's alleged cash advance therein, reprint the same on a scratch paper, and repeatedly fold the paper to make it look old. On the basis of the reprinted subject document, Siy was

[4] See *id*. at 24-25. See also *id*. at 54-55.

administratively charged for using office funds for personal use. On April 18, 2000, Siy was terminated from her job and Lacanilao succeeded the former in the position she left vacant. The foregoing prompted Siy to pursue criminal charges against Marty, Lacanilao, and Manansala for Falsification of Private Documents. Eventually, the charge against Marty was withdrawn, and an Amended Information[5] dated July 19, 2001 for the aforesaid crime was filed against Lacanilao and Manansala before the Metropolitan Trial Court of Makati City, Branch 65 (MeTC).[6]

In her defense, Manansala maintained that she was just following Lacanilao's orders as the latter is her superior who approves her work. She added that when Lacanilao instructed her to reprint the subject report, she was apprehensive to follow because she suspected something, but nevertheless acquiesced to such instruction.[7]

The MeTC Ruling

In a Decision[8] dated October 27, 2010, the MeTC both found Lacanilao and Manansala guilty beyond reasonable doubt of committing the crime of Falsification of Private Documents and, accordingly: (*a*) sentenced Lacanilao to suffer the penalty of imprisonment for the indeterminate period of one (1) year and one (1) day of *arresto mayor maximum* to *prision correccional minimum*, as minimum, to three (3) years, six (6) months, and twenty one (21) days of *prision correccional medium* and *maximum*, as maximum, and to pay a fine of ₱3,000.00; (*b*) sentenced Manansala to suffer the penalty of imprisonment for the indeterminate period of four (4) months and one (1) day of *arresto mayor maximum* to *prision correccional minimum*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional medium*

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

[6] See *id*. at 25. See also *id*. at 55.

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

[8] *Id*. at 48-59. Penned by Presiding Judge Henry E. Laron.

and *maximum*, as maximum, and to pay a fine of ₱2,000.00; and (*c*) ordered each of the accused to pay Siy the amounts of ₱100,000.00 as moral damages and ₱50,000.00 as attorney's fees.[9]

The MeTC found that Lacanilao and Manansala conspired in falsifying the subject report by stating therein that Siy made a cash advance and used it for her personal use, despite knowing all along that Siy never did so; thus, resulting in Siy's termination from her work. In this regard, the MeTC tagged Lacanilao as the mastermind of the crime as she benefited the most from Siy's termination, while Manansala aided Lacanilao in the realization of her sinister motive.[10]

Nonetheless, the MeTC appreciated the mitigating circumstance of acting under an impulse of uncontrollable fear in favor of Manansala, noting that she merely acted upon Lacanilao's instructions and that she only performed such acts out of fear that she would lose her job if she defied her superior's orders.[11] Manansala moved for reconsideration[12] but was denied in an Order[13] dated January 31, 2011.

Aggrieved, Manansala appealed her conviction to the Regional Trial Court of Makati, Branch 142 (RTC).[14] Records are, however, bereft of any showing that Lacanilao made any similar appeal, thus, her conviction had lapsed into finality.

The RTC Ruling

In a Decision[15] dated October 20, 2011, the RTC affirmed the MeTC ruling *in toto*. It held that Manansala clearly falsified

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[9] *Id*. at 58-59.

[10] *Id*. at 55-58.

[11] *Id*. at 58.

[12] *Id*. at 60-67.

[13] *Id*. at 88.

[14] See Notice of Appeal dated February 28, 2011; *id*. at 89-91.

[15] *Id*. at 130-141. Penned by Presiding Judge Dina Pestano Teves.

the subject report by inserting a statement therein which she knew from the start to be untruthful – that Siy made a cash advance for her personal needs – resulting in prejudice on the part of Siy.[16]

Manansala moved for reconsideration,[17] but was denied in an Order[18] dated January 30, 2012. Undaunted, she elevated the matter to the CA *via* a petition for review.[19]

The CA Ruling

In a Decision[20] dated April 16, 2014, the CA affirmed the RTC ruling. The CA agreed with the MeTC and RTC's findings that Manansala made untruthful statements in the subject report which was contrary to her duty as UMC Petty Cash Custodian and that such findings were utilized to the detriment of Siy who was terminated on the basis of said falsified report.[21]

Dissatisfied, Manansala moved for reconsideration,[22] which was, however, denied in a Resolution[23] dated October 7, 2014; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed Manansala's conviction for Falsification of Private Documents.

The Court's Ruling

The petition is without merit.

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[16] *Id*. at 137-140.

[17] See Motion for Reconsideration dated November 18, 2011; *id.* at 142-149.

[18] *Id*. at 153.

[19] See Petition for Review dated March 8, 2012; *id*. at 154-171.

[20] *Id*. at 23-30.

[21] *Id*. at 26-29.

[22] *Id*. at 34-41.

[23] *Id*. at 32-33.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[24]

Proceeding from the foregoing, the Court agrees with the ruling of the courts *a quo* convicting Manansala of the crime of Falsification of Private Documents, but disagrees in the appreciation of the "mitigating circumstance" of acting under an impulse of uncontrollable fear in her favor.

As already stated, Manansala was charged with committing the crime of Falsification of Private Documents defined and penalized under Article 172 (2), in relation to Article 171 (4), of the RPC, which respectively read as follows:

ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

xxx xxx xxx

4. Making untruthful statements in a narration of facts;

xxx xxx xxx

ART. 172. *Falsification by private individuals and use of falsified documents.* – The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

xxx xxx xxx

[24] See *Wacoy v. People*, G.R. No. 213792, June 22, 2015, citing *People v. Arguta*, G.R. No. 213216, April 22, 2015.

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

xxx xxx xxx

The elements of Falsification of Private Documents under Article 172 (2) of the RPC are: (*a*) that the offender committed any of the acts of falsification, except those in Article 171 (7) of the same Code; (*b*) that the falsification was committed in any private document; and (*c*) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage.[25] On the other hand the elements of Falsification under Article 171 (4) of the RPC are as follows: (*a*) the offender makes in a public document untruthful statements in a narration of facts; (*b*) he has a legal obligation to disclose the truth of the facts narrated by him; and (*c*) the facts narrated by him are absolutely false.[26]

In the instant case, the MeTC, RTC, and CA all correctly found Manansala guilty beyond reasonable doubt of the aforesaid crime, considering that: (*a*) as UMC's Petty Cash Custodian, she is legally obligated to disclose only truthful statements in the documents she prepares in connection with her work, such as the subject report; (*b*) she knew all along that Siy never made any cash advance nor utilized the proceeds thereof for her personal use; (*c*) despite such knowledge, she still proceeded in revising the subject report by inserting therein a statement that Siy made such a cash advance; and (*d*) she caused great prejudice to Siy as the latter was terminated from her job on account of the falsified report that she prepared. Basic is the rule that findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal[27] and, absent

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[25] *Batulanon v. People*, 533 Phil. 336, 349 (2006); citations omitted.

[26] *Galeos v. People*, 657 Phil. 500, 520 (2011), citing *Fullero v. People*, 559 Phil. 524, 539 (2007).

[27] See *Uyboco v. People*, G.R. No. 211703, December 10, 2014, citing *Navallo v. Sandiganbayan*, G.R. No. 97214, July 18, 1994, 234 SCRA 175, 185-186.

a clear disregard of the evidence before it that can otherwise affect the results of the case or any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the CA, are binding and conclusive upon this Court,[28] as in this case.

While the conviction of Manansala for the aforesaid crime was proper, it was error for the MeTC to appreciate the "mitigating circumstance" of acting under an impulse of uncontrollable fear and for the RTC and the CA to affirm *in toto* the MeTC's ruling without correcting the latter court's mistake.

To begin with, "acting under an impulse of uncontrollable fear" is not among the mitigating circumstances enumerated in Article 13 of the RPC, but is an exempting circumstance provided under Article 12 (6) of the same Code. Moreover, for such a circumstance to be appreciated in favor of an accused, the following elements must concur: (*a*) the existence of an uncontrollable fear; (*b*) that the fear must be real and imminent; and (*c*) the fear of an injury is greater than, or at least equal to, that committed.[29] For such defense to prosper, the duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough.[30]

In the instant case, while the records show that Manansala was apprehensive in committing a falsity in the preparation of the subject report as she did not know the repercussions of her actions,[31] nothing would show that Lacanilao, or any of her superiors at UMC for that matter, threatened her with loss of employment should she fail to do so. As there was an absence of any real and imminent threat, intimidation, or coercion that

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[28] See *id*., citing *Plameras v. People*, G.R. No. 187268, September 4, 2013, 705 SCRA 104, 122.

[29] *People v. Anticamara*, 666 Phil. 484, 505 (2011), citing *People v. Baron,* 635 Phil. 608, 624 (2010).

[30] *Id*. at 505, citing *People v. Anod,* 613 Phil. 565, 571 (2009).

[31] See *rollo*, pp. 138-140.

would have compelled Manansala to do what she did, such a circumstance cannot be appreciated in her favor.

Hence, as there should be no mitigating circumstance that would modify Manansala's criminal liability in this case – and also taking into consideration the provisions of the Indeterminate Sentence Law – she must be sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated April 16, 2014 and the Resolution dated October 7, 2014 of the Court of Appeals in CA-G.R. CR No. 34763 are hereby **AFFIRMED** with **MODIFICATION**, sentencing petitioner Adina B. Manansala to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.

SO ORDERED.

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

EN BANC

[G.R. No. 221318. December 16, 2015]

KABATAAN PARTY-LIST, REPRESENTED BY REPRESENTATIVE JAMES MARK TERRY L. RIDON AND MARJOHARA S. TUCAY; SARAH JANE I. ELAGO, PRESIDENT OF THE NATIONAL UNION OF STUDENTS OF THE PHILIPPINES; VENCER MARI E. CRISOSTOMO, CHAIRPERSON OF THE ANAKBAYAN; MARC LINO J. ABILA, NATIONAL PRESIDENT OF THE COLLEGE EDITORS GUILD

OF THE PHILIPPINES; EINSTEIN Z. RECEDES, DEPUTY SECRETARY-GENERAL OF ANAKBAYAN; CHARISSE BERNADINE I. BAÑEZ, CHAIRPERSON OF THE LEAGUE OF FILIPINO STUDENTS; ARLENE CLARISSE Y. JULVE, MEMBER OF ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN (AGHAM); and SINING MARIA ROSA L. MARFORI, *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PROCEDURAL BARRIERS BRUSHED ASIDE AS PETITION HINGED ON ISSUE PERTAINING TO THE RIGHT OF SUFFRAGE.—** Recognizing that the petition is hinged on an important constitutional issue pertaining to the right of suffrage, the Court views the matter as one of transcendental public importance and of compelling significance. Consequently, it deems it proper to brush aside the foregoing procedural barriers and instead, resolve the case on its merits. x x x [T]he issue on whether or not the policy on biometrics validation, as provided under RA 10367 and fleshed out in the assailed COMELEC Resolutions, should be upheld is one that demands immediate adjudication in view of the critical preparatory activities that are currently being undertaken by the COMELEC with regard to the impending May 2016 Elections. Thus, it would best subserve the ends of justice to settle this controversy not only in order to enlighten the citizenry, but also so as not to stymy the operations of a co-constitutional body.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; SUFFRAGE; QUALIFICATIONS FOR THE EXERCISE OF SUFFRAGE.—** Section 1, Article V of the 1987 Constitution delineates the current parameters for the exercise of suffrage: x x x Dissecting the provision, one must meet the following qualifications in order to exercise the right of suffrage: ***first***, he must be a Filipino citizen; ***second***, he must not be disqualified by law; and ***third***, he must have resided in the Philippines for at least one (1) year and in the place wherein he proposes to vote for at least six (6) months immediately preceding the election.

3. ID.; ELECTION LAWS; RA 8189 GOVERNS THE PROCESS OF REGISTRATION OF VOTERS.— RA 8189 primarily governs the process of registration. It defines "registration" as "the act of accomplishing and filing of a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides and including the same in the book of registered voters upon approval by the [ERB]." As stated in Section 2 thereof, RA 8189 was passed in order "to systematize the present method of registration in order to establish a clean, complete, permanent and updated list of voters."

4. ID.; ID.; ID.; BIOMETRICS LAW (RA 10367) COMPLEMENTING RA 8189; REGISTERED AND NEW VOTERS REQUIRED TO SUBMIT THEMSELVES FOR BIOMETRICS VALIDATION; FAILURE THEREOF SHALL DEACTIVATE THE VOTER'S RECORD.— To complement RA 8189 in light of the advances in modern technology, RA 10367, or the assailed Biometrics Law, was signed into law in February 2013. It built on the policy considerations behind RA 8189 as it institutionalized biometrics validation as part of the registration process x x x "*Biometrics* refers to a quantitative analysis that provides a positive identification of an individual such as voice, photograph, fingerprint, signature, iris, and/or such other identifiable features." Sections 3 and 10 of RA 10367 respectively require registered and new voters to submit themselves for biometrics validation. x x x Under Section 2 (d) of RA 10367, "*validation*" is defined as "the process of taking the biometrics of registered voters whose biometrics have not yet been captured." The consequence of non-compliance is "*deactivation*," which "refers to the removal of the registration record of the registered voter from the corresponding precinct book of voters for failure to comply with the validation process as required by [RA 10367]." x x x Notably, the penalty of deactivation, as well as the requirement of validation, **neutrally applies to all voters**. x x x [T]his requirement is not a "qualification" to the exercise of the right of suffrage, but a mere aspect of the registration procedure, of which the State has the right to reasonably regulate. It was institutionalized conformant to the limitations of the 1987 Constitution and is a mere complement to the existing Voter's Registration Act of 1996.

5. ID.; STATUTORY CONSTRUCTION; JUDICIAL REVIEW OF STATUTES AND ORDINANCES ENTAILS STRICT

SCRUTINY FOCUSING ON COMPELLING GOVERNMENTAL INTEREST; PRESENT IN RA 10367 BIOMETRICS VALIDATION REQUIREMENT.— In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. x x x Applying strict scrutiny, the focus is **on the presence of compelling, rather than substantial, governmental interest** and **on the absence of less restrictive means for achieving that interest**, and the burden befalls upon the State to prove the same. In this case, respondents have shown that the biometrics validation requirement under RA 10367 advances a compelling state interest. It was precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing – if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants.

6. ID.; ELECTION LAWS; RESOLUTION NO. 9721 (ON PROCEDURE FOR BIOMETRICS VALIDATION REQUIREMENT); JUSTIFIED AS IT WAS NARROWLY TAILORED TO ACHIEVE THE COMPELLING STATE INTEREST OF ESTABLISHING A CLEAN, COMPLETE, PERMANENT AND UPDATED LIST OF VOTERS AND IT WAS DEMONSTRABLY THE LEAST RESTRICTIVE MEANS IN PROMOTING THAT INTEREST.— [T]he objective of the law was to cleanse the national voter registry so as to eliminate electoral fraud and ensure that the results of the elections were truly reflective of the genuine will of the people. [I]t was shown that the regulation is the least restrictive means for achieving the above-said interest. Section 6 of Resolution No. 9721 sets the procedure for biometrics validation, whereby the registered voter is only required to: (*a*) personally appear before the Office of the Election Officer; (*b*) present a competent evidence of identity; and (*c*) have his photo, signature, and fingerprints recorded. It is, in effect, a manner of updating one's registration for those already registered under RA 8189, or a first-time registration for new registrants. x x x Moreover, it deserves mentioning that RA 10367 and Resolution No. 9721 did not mandate registered voters to submit themselves to validation every time there is an election. In fact, it only required the voter to undergo

the validation process one (1) time, which shall remain effective in succeeding elections, provided that he remains an active voter. To add, the failure to validate did not preclude deactivated voters from exercising their right to vote in the succeeding elections. To rectify such status, they could still apply for reactivation following the procedure laid down in Section 28 of RA 8189. That being said, the assailed regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest.

7. ID.; ID.; RA 10367 AND RELATED COMELEC RESOLUTIONS THEREIN; NO VIOLATION OF PROCEDURAL DUE PROCESS AS SUMMARY NATURE OF THE PROCEEDINGS DOES NOT DEPART FROM THE FACT THAT OPPORTUNITY TO BE HEARD WAS GIVEN AND THE PUBLIC HAS BEEN SUFFICIENTLY APPRAISED.— The summary nature of the proceedings does not depart from the fact that petitioners were given the opportunity to be heard. Relatedly, it deserves emphasis that the public has been sufficiently informed of the implementation of RA 10367 and its deactivation feature. RA 10367 was duly published as early as February 22, 2013, and took effect fifteen (15) days after. x x x As implemented, the process of biometrics validation commenced on July 1, 2013, or approximately two and a half (2½) years before the October 31, 2015 deadline. To add, the COMELEC conducted a massive public information campaign. x x x On top of that, the COMELEC exerted efforts to make the validation process more convenient for the public as it enlisted the assistance of malls across Metro Manila to serve as satellite registration centers and declared Sundays as working days for COMELEC offices within the National Capital Region and in highly urbanized cities. Considering these steps, the Court finds that the public has been sufficiently apprised of the implementation of RA 10367, and its penalty of deactivation in case of failure to comply. Thus, there was no violation of procedural due process.

8. ID.; ID.; ID.; QUESTIONS RELATING TO THE WISDOM, MORALITY OR PRACTICABILITY OF STATUTES ARE POLICY MATTERS THAT SHOULD NOT BE ADDRESSED TO THE JUDICIARY.— [P]etitioners' submissions principally

assail the wisdom of the legislature in adopting the biometrics registration system in curbing electoral fraud. In this relation, it is significant to point out that questions relating to the wisdom, morality, or practicability of statutes are policy matters that should not be addressed to the judiciary. x x x Whether RA 10367 was wise or unwise, or was the best means in curtailing electoral fraud is a question that does not present a justiciable issue cognizable by the courts. Indeed, the reason behind the legislature's choice of adopting biometrics registration x x x is essentially a policy question and, hence, beyond the pale of judicial scrutiny.

9. ID.; ID.; ID.; RA NO. 9863 WHICH FIXED THE DEADLINE FOR VALIDATION DID NOT VIOLATE SECTION 8 OF RA 8189 ON SYSTEM FOR CONTINUING REGISTRATION OF VOTERS.— Section 8 of RA 8189 states: Section 8. System of Continuing Registration of Voters. – The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours. **No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election**. x x x [T]he 120- and 90-day periods stated therein refer to the prohibitive period beyond which voter registration may no longer be conducted. As already resolved in this Court's Resolution dated December 8, 2015 in G.R. No. 220918, the subject provision does not mandate COMELEC to conduct voter registration up to such time; rather, it only provides a period which may not be reduced, but may be extended depending on the administrative necessities and other exigencies.

10. ID.; COMELEC; MEASURES ADOPTED FOR VOTER REGISTRATION, RESPECTED.— [A]s the constitutional body specifically charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, the COMELEC should be given sufficient leeway in accounting for the exigencies of the upcoming elections. In fine, its measures therefor should be respected, unless it is clearly shown that the same are devoid of any reasonable justification.

LEONEN, *J., concurring opinion*:

POLITICAL LAW; ELECTION LAWS; BIOMETRICS LAW (RA NO. 10367); A VALID REGULATION THAT ASSISTS IN THE IDENTIFICATION OF A PERSON FOR PURPOSES OF ENSURING THAT THE RIGHT TO VOTE IS EXERCISED ONLY BY THAT PERSON.— I concur. Republic Act No. 103671 is a valid regulation that assists in the identification of a person for purposes of ensuring that the right to vote is exercised only by that person. It is also a measure to purge the voters list of spurious names or ghost voters. Viewed this way, Republic Act No. 10367 is not a burden on the right of suffrage; rather, it enhances this fundamental right. It provides mechanisms to ensure the identity of the voter, prevent multiple votes for a single individual, and deter the casting of ballots in the names of persons who do not actually exist or who, at the time of the elections, are already deceased. The requirement of biometric registration, therefore, is not an additional qualification but rather a means to ensure and protect the identity of the voter. Names are deactivated because these do not correspond to real persons. Thus, there is no disqualification in as much as fictitious names or names of the deceased do not represent real persons.

APPEARANCES OF COUNSEL

Maria Kristina C. Conti for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Rights beget responsibilities; progress begets change.

Before the Court is a petition for *certiorari* and prohibition[1] filed by herein petitioners *Kabataan* Party-List, represented by Representative James Mark Terry L. Ridon and National President

[1] With application for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. *Rollo*, pp. 3-34.

Marjohara S. Tucay; Sarah Jane I. Elago, President of the National Union of Students of the Philippines; Vencer Mari E. Crisostomo and Einstein Z. Recedes, Chairperson and Deputy Secretary-General of *Anakbayan*, respectively; Marc Lino J. Abila, National President of the College Editors Guild of the Philippines; Charisse Bernadine I. Bañez, Chairperson of the League of Filipino Students; Arlene Clarisse Y. Julve, member of *Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya para sa Mamamayan* (AGHAM); and Sining Maria Rosa L. Marfori (petitioners) assailing the constitutionality of Republic Act No. (RA) 10367, entitled "An Act Providing for Mandatory Biometrics Voter Registration,"[2] as well as respondent Commission on Elections' (COMELEC) Resolution Nos. 9721,[3] 9863,[4] and 10013,[5] all related thereto.

The Facts

On February 15, 2013, President Benigno S. Aquino III signed into law RA 10367, which is a consolidation of House Bill No. 3469 and Senate Bill No. 1030, passed by the House of Representatives and the Senate on December 11, 2012 and December 12, 2012,[6] respectively. Essentially, RA 10367 mandates

[2] Approved on February 15, 2013.

[3] Entitled "RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT 10367, OTHERWISE KNOWN AS 'AN ACT PROVIDING FOR MANDATORY BIOMETRICS VOTER REGISTRATION,'" signed by then Chairman Sixto S. Brillantes, Jr., and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Parreño, and Luie Tito F. Guia on June 26, 2013. *Rollo*, pp. 45-49.

[4] Entitled "IN THE MATTER OF 1) AMENDING SECTIONS 28 AND 38 OF RESOLUTION NO. 9853, DATED FEBRUARY 19, 2013 AND 2) GUIDELINES ON DEACTIVATION OF VOTERS REGISTRATION RECORDS," dated April 1, 2014. *Id.* at 50-54.

[5] Entitled "IN THE MATTER OF DEACTIVATING THE REGISTRATION RECORDS OF VOTERS WITHOUT BIOMETRICS DATA IN THE VOTERS' REGISTRATION SYSTEM FOR FAILURE TO VALIDATE PURSUANT TO REPUBLIC ACT NO. 10367," signed by Chairman Juan Andres D. Bautista, and Commissioners Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, Arthur D. Lim, Ma. Rowena Amelia V. Guanzon, and Sheriff M. Abas. *Id.* at 55-58.

[6] *Id.* at 13.

the COMELEC to implement a mandatory biometrics registration system for new voters[7] in order to establish a clean, complete, permanent, and updated list of voters through the adoption of biometric technology.[8] RA 10367 was duly published on February 22, 2013,[9] and took effect fifteen (15) days after.[10]

RA 10367 likewise directs that "**[r]egistered voters whose biometrics have not been captured shall submit themselves for validation**."[11] "**Voters who fail to submit for validation** on or before the last day of filing of application for registration for purposes of the May 2016 [E]lections **shall be deactivated** x x x."[12] Nonetheless, voters may have their records reactivated after the May 2016 Elections, provided that they comply with the procedure found in Section 28[13] of RA 8189,[14] also known as "The Voter's Registration Act of 1996."[15]

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[7] See Section 10 of RA 10367.

[8] See Section 1 of RA 10367.

[9] RA 10367 was published in the February 22, 2013 issues of the Manila Bulletin and the Philippine Star.

[10] See Section 15 of RA 10367.

[11] See Section 3 of RA 10367; emphasis supplied.

[12] See Section 7 of RA 10367; emphases supplied.

[13] Section 28. Reactivation of Registration. – Any voter whose registration has been deactivated pursuant to the preceding Section may file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating that the grounds for the deactivation no longer exist any time but not later than one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

The Election Officer shall submit said application to the Election Registration Board for appropriate action.

In case the application is approved, the Election Officer shall retrieve the registration record from the inactive file and include the same in the corresponding precinct book of voters. Local heads or representatives of political parties shall be properly notified on approved applications.

[14] Entitled "AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR" (approved on June 11, 1996).

[15] See Section 8 of RA 10367.

On June 26, 2013, the COMELEC issued **Resolution No. 9721**[16] which serves as the implementing rules and regulations of RA 10367, thus, prescribing the procedure for validation,[17] deactivation,[18] and reactivation of voters' registration records (VRRs).[19] Among others, the said Resolution provides that: (*a*) "**[t]he registration records of voters without biometrics data who failed to submit for validation on or before the last day of filing of applications for registration for the purpose of the May 9, 2016 National and Local Elections shall be deactivated** in the last [Election Registration Board (ERB)] hearing to be conducted prior to said elections";[20] (*b*) "[t]he following registered voters shall have their biometrics data validated: [(1)] Those who **do not have BIOMETRICS data** appearing in the Voter['s] Registration System (VRS); and [(2)] Those who have **incomplete BIOMETRICS data** appearing in the VRS";[21] (*c*) "**[d]eactivated voters shall not be allowed to vote**";[22] and (*d*) "[d]eactivation x x x **shall comply with the requirements on posting, ERB hearing and service of individual notices to the deactivated voters**."[23] Resolution No. 9721 further states that, as of the last day of registration and validation for the 2013 Elections on October 31, 2012, a total of 9,018,256 registered voters were without biometrics data.[24] Accordingly, all Election Officers (EOs) were directed to "**conduct [an] information campaign on the conduct of validation**."[25]

On July 1, 2013, the COMELEC, pursuant to the aforesaid Resolution, commenced the mandatory biometric system of registration. To make biometric registration convenient and accessible

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[16] *Rollo*, pp. 45-49.

[17] See Section 6 of Resolution No. 9721; *id.* at 47-48.

[18] See Section 8 of Resolution No. 9721; *id.*

[19] See Section 9 of Resolution No. 9721; *id.*

[20] See Section 8 of Resolution No. 9721; *id.*, emphasis supplied.

[21] See Section 2 of Resolution No. 9721; *id.* at 45-46, emphases supplied.

[22] See Section 8 of Resolution No. 9721; *id.* at 48, emphasis supplied.

[23] See Section 8 of Resolution No. 9721; *id.*, emphasis supplied.

[24] See second Whereas clause of Resolution No. 9721; *id.* at 45.

[25] See Section 12 of Resolution No. 9721; *id.* at 49, emphasis supplied.

to the voting public, aside from the COMELEC offices in every local government unit, it likewise established satellite registration offices in barangays and malls.[26]

On April 1, 2014, the COMELEC issued **Resolution No. 9863**[27] which amended certain portions[28] of Resolution No. 9853[29] dated February 19, 2014, by stating that ERBs shall deactivate the VRRs of those who "failed to submit for validation despite notice **on or before October 31, 2015**," and that the "[d]eactivation for cases falling under this ground shall be made during the **November 16, 2015** Board hearing."[30]

A month later, or in May 2014, the COMELEC launched the ***NoBio-NoBoto* public information campaign** which ran concurrently with the period of continuing registration.[31]

On November 3, 2015, the COMELEC issued **Resolution No. 10013**[32] which provides for the "procedures in the deactivation of [VRRs] who do not have biometrics data in the [VRS] after the October 31, 2015 deadline of registration and validation."[33] Among others, the said Resolution directed the EOs to: (*a*) "**[p]ost the lists of voters without biometrics data** in the bulletin boards of the City/Municipal hall, Office of the Election Officer and in the barangay hall along with the notice of ERB hearing;" and (*b*)

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[26] See *id*. at 79.

[27] *Id*. at 50-54.

[28] Particularly amending Sections 28 and 38 of COMELEC Resolution No. 9853, see *id*. at 78.

[29] Entitled "RULES AND REGULATIONS ON THE RESUMPTION OF THE SYSTEM OF CONTINUING REGISTRATION OF VOTERS, VALIDATION AND UPDATING OF REGISTRATION RECORDS FOR THE MAY 9, 2016 SYNCHRONIZED NATIONAL, LOCAL AND ARMM REGIONAL ELECTIONS AND OTHER REGISTRATION POLICIES," signed by then Chairman Sixto S. Brillantes, Jr., and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Parreño, and Luie Tito F. Guia.

[30] See Item B (2a) (7) of Resolution No. 9863; *rollo*, p. 53.

[31] See *id*. at 71.

[32] *Id*. at 55-58.

[33] See *id*. at 56.

"**[s]end individual notices to the affected voters** included in the generated list of voters without biometrics data."[34] It also provides that "[a]ny **opposition/objection** to the deactivation of records shall be filed not later than November 9, 2015 in accordance with the period prescribed in Section 4,[35] [Chapter I,] Resolution No. 9853."[36] During the ERB hearing, which proceedings are summary in nature,[37] "the ERBs shall, based on the list of voters without biometrics data, order the deactivation of registration records on the ground of 'failure to validate.'"[38] Thereafter, EOs were required to "[s]end individual notices to the deactivated voters within five (5) days from the last day of ERB hearing."[39] Moreover, Resolution No. 10013 clarified that the "[r]egistration records of voters with **incomplete biometrics data and those**

[34] See Items A (3) and (4) of Resolution No. 10013; *id*. at 57.

[35] Section 4. Hearing and approval/disapproval of applications. – The applications shall be heard by the Election Registration Board (Board) at the [Office of the Election Officer (OEO)], in accordance with the following schedule:

Period to file applications	Last day to post Notice of Hearing with Lists of applications	Last day to file opposition to applications	Hearing and Approval/ Disapproval of applications
May 6 to June 30, 2014	July 7, 2014	July 14, 2014	July 21, 2014
July 1 to September 30, 2014	October 6, 2014	October 13, 2014	October 20, 2014
October 1 to December 20, 2014	January 5, 2015	January 12, 2015	January 19, 2015
January 5 to March 31, 2015	April 6, 2015	April 13, 2015	April 20, 2015
April 1 to June 30, 2015	July 6, 2015	July 13, 2015	July 20, 2015
July 1 to September 30, 2015	October 5, 2015	October 12, 2015	October 19, 2015
October 1 to 31, 2015	November 4, 2015	November 9, 2015	November 16, 2015

If the last day to post notice, file oppositions and hearing for approval/ disapproval falls on a holiday or a non-working day, the same shall be done on the next working day.

[36] See Item A (5) of Resolution No. 10013; *id*. at 57.

[37] See Item B (3) of Resolution No. 10013; *id*.

[38] See Item B (1) of Resolution No. 10013; *id*.

[39] See Item C (4) of Resolution No. 10013; *id*. at 58.

corrupted data (biometrics) in the database shall not be deactivated and be allowed to vote in the May 9, 2016 Synchronized National, Local and [Autonomous Region on Muslim Mindanao (ARMM)] Regional Elections."[40]

On November 25, 2015, herein petitioners filed the instant petition with application for temporary restraining order (TRO) and/or writ of preliminary mandatory injunction (WPI) assailing the constitutionality of the biometrics validation requirement imposed under RA 10367, as well as COMELEC Resolution Nos. 9721, 9863, and 10013, all related thereto. They contend that: (*a*) biometrics validation rises to the level of an additional, substantial qualification where there is penalty of deactivation;[41] (*b*) biometrics deactivation is not the disqualification by law contemplated by the 1987 Constitution;[42] (*c*) biometrics validation gravely violates the Constitution, considering that, applying the strict scrutiny test, it is not poised with a compelling reason for state regulation and hence, an unreasonable deprivation of the right to suffrage;[43] (*d*) voters to be deactivated are not afforded due process;[44] and (*e*) poor experience with biometrics should serve as warning against exacting adherence to the system.[45] Albeit already subject of a prior petition[46] filed before this Court, petitioners also raise herein the argument that deactivation by November 16, 2015 would result in the premature termination of the registration period contrary to Section 8[47] of

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[40] See Item A (2) of Resolution No. 10013; *id*. at 57.

[41] See *id*. at 19-20.

[42] See *id*. at 20-21.

[43] See *id*. at 22-24.

[44] See *id*. at 26-28.

[45] See *id*. at 28-31.

[46] Filed by the same parties against the COMELEC on October 29, 2015 docketed as **G.R. No. 220918**; *rollo*, p. 7.

[47] Section 8. System of Continuing Registration of Voters. – The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours. No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

RA 8189.[48] Ultimately, petitioners pray that this Court declare RA 10367, as well as COMELEC Resolution Nos. 9721, 9863, and 10013, unconstitutional and that the COMELEC be commanded to desist from deactivating registered voters without biometric information, to reinstate voters who are compliant with the requisites of RA 8189 but have already been delisted, and to extend the system of continuing registration and capture of biometric information of voters until January 8, 2016.[49]

On December 1, 2015, the Court required the COMELEC to file its comment to the petition. Meanwhile, it issued a TRO requiring the COMELEC to desist from deactivating the registration records of voters without biometric information, pending resolution of the case at hand.[50]

On December 7, 2015, COMELEC Chairman Juan Andres D. Bautista, through a letter[51] addressed to the Court *En Banc*, urgently appealed for the immediate lifting of the above-mentioned TRO, stating that the COMELEC is set to finalize the Project of Precincts (POP) on December 15, 2015, and that the TRO issued in this case has the effect of including the ₱2.4 Million deactivated voters in the list of voters, which, in turn, would require revisions to the POP and consequently, adversely affect the timelines of all other interrelated preparatory activities to the prejudice of the successful implementation of the Automated Election System (AES) for the 2016 Elections.[52]

On December 11, 2015, the COMELEC, through the Office of the Solicitor General, filed its comment[53] to the instant petition. On even date, petitioners filed a manifestation[54] asking the Court

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[48] *Rollo*, p. 12.

[49] *Id*. at 33.

[50] See TRO and Notice of Resolution dated December 1, 2015; *id*. at 70-A to 70-D.

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

[52] See *id*. at 74-75.

[53] See Consolidated Comment and Manifestation *Ad Cautelam*; *id*. at 77-101.

[54] See *id*. at 102-109.

to continue the TRO against the deactivation of voters without biometric information.[55]

With no further pleadings required of the parties, the case was submitted for resolution.

The Issue Before the Court

The core issue in this case is whether or not RA 10367, as well as COMELEC Resolution Nos. 9721, 9863, and 10013, all related thereto, are unconstitutional.

The Ruling of the Court

The petition is bereft of merit.

I.

At the outset, the Court passes upon the procedural objections raised in this case. In particular, the COMELEC claims that petitioners: (*a*) failed to implead the Congress, the Office of the President, and the ERB which it purports are indispensable parties to the case;[56] (*b*) did not have the legal standing to institute the instant petition;[57] and (*c*) erroneously availed of *certiorari* and prohibition as a mode of questioning the constitutionality of RA 10367 and the assailed COMELEC Resolutions.[58]

The submissions do not hold.

Recognizing that the petition is hinged on an important constitutional issue pertaining to the right of suffrage, the Court views the matter as one of transcendental public importance and of compelling significance. Consequently, it deems it proper to brush aside the foregoing procedural barriers and instead, resolve the case on its merits. As resonated in the case of

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[55] *Id*. at 108.

[56] *Id*. at 81-83.

[57] *Id*. at 83-84.

[58] *Id*. at 84-85.

Pabillo v. COMELEC,[59] citing *Capalla v. COMELEC*[60] and *Guingona, Jr. v. COMELEC*:[61]

> There can be no doubt that the coming 10 May 2010 [in this case, the May 2016] elections is a matter of great public concern. On election day, the country's registered voters will come out to exercise the sacred right of suffrage. Not only is it an exercise that ensures the preservation of our democracy, the coming elections also embodies our people's last ounce of hope for a better future. It is the final opportunity, patiently awaited by our people, for the peaceful transition of power to the next chosen leaders of our country. **If there is anything capable of directly affecting the lives of ordinary Filipinos so as to come within the ambit of a public concern, it is the coming elections**, [x x x.]

Thus, in view of the compelling significance and transcending public importance of the issues raised by petitioners, the technicalities raised by respondents should not be allowed to stand in the way, if the ends of justice would not be subserved by a rigid adherence to the rules of procedure. (Emphasis and underscoring supplied)

Furthermore, the issue on whether or not the policy on biometrics validation, as provided under RA 10367 and fleshed out in the assailed COMELEC Resolutions, should be upheld is one that demands immediate adjudication in view of the critical preparatory activities that are currently being undertaken by the COMELEC with regard to the impending May 2016 Elections. Thus, it would best subserve the ends of justice to settle this controversy not only in order to enlighten the citizenry, but also so as not to stymy the operations of a co-constitutional body. As pronounced in *Roque, Jr. v. COMELEC*:[62]

[T]he bottom line is that the Court may except a particular case from the operations of its rules when the demands of justice so require.

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[59] See G.R. Nos. 216098 and 216562, April 21, 2015.

[60] G.R. Nos. 201112, 201121, 201127, and 201413, June 13, 2012, 673 SCRA 1, 47-48.

[61] 634 Phil. 516, 529 (2010).

[62] 615 Phil. 149 (2009).

Put a bit differently, rules of procedure are merely tools designed to facilitate the attainment of justice. Accordingly, technicalities and procedural barriers should not be allowed to stand in the way, if the ends of justice would not be subserved by a rigid adherence to the rules of procedure.[63]

That being said, the Court now proceeds to resolve the substantive issues in this case.

II.

Essentially, the present petition is a constitutional challenge against the biometrics validation requirement imposed under RA 10367, including COMELEC Resolution Nos. 9721, 9863, and 10013. As non-compliance with the same results in the penalty of deactivation, petitioners posit that it has risen to the level of an unconstitutional substantive requirement in the exercise of the right of suffrage.[64] They submit that the statutory requirement of biometric validation is no different from the unconstitutional requirement of literacy and property because mere non-validation already absolutely curtails the exercise of the right of suffrage through deactivation.[65] Further, they advance the argument that deactivation is not the disqualification by law contemplated as a valid limitation to the exercise of suffrage under the 1987 Constitution.[66]

The contestation is untenable.

As early as the 1936 case of *The People of the Philippine Islands v. Corral*,[67] it has been recognized that "[t]he right to vote is not a natural right but is **a right created by law**. Suffrage is **a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good**. In the early stages of the evolution of the representative

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[63] *Id*. at 200.

[64] *Rollo*, p. 19.

[65] *Id*. at 20.

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

[67] 62 Phil. 945, 948 (1936).

system of government, the exercise of the right of suffrage was limited to a small portion of the inhabitants. But with the spread of democratic ideas, the enjoyment of the franchise in the modern states has come to embrace the mass of the audit classes of persons are excluded from the franchise."[68]

Section 1, Article V of the 1987 Constitution delineates the current parameters for the exercise of suffrage:

> Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

Dissecting the provision, one must meet the following qualifications in order to exercise the right of suffrage: ***first***, he must be a Filipino citizen; ***second***, he must not be disqualified by law; and ***third***, he must have resided in the Philippines for at least one (1) year and in the place wherein he proposes to vote for at least six (6) months immediately preceding the election.

The second item more prominently reflects the franchised nature of the right of suffrage. The State may therefore regulate said right by imposing statutory disqualifications, with the restriction, however, that the same do not amount to, as per the second sentence of the provision, a "literacy, property or other substantive requirement." Based on its genesis, it may be gleaned that the limitation is geared towards the elimination of irrelevant standards that are purely based on socio-economic considerations that have no bearing on the right of a citizen to intelligently cast his vote and to further the public good.

To contextualize, the first Philippine Election Law, Act No. 1582, which took effect on January 15, 1907, mandated that only men who were at least twenty-three (23) years old and "comprised within one of the following three classes" were

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[68] See *id*.

allowed to vote: (*a*) those who prior to the 13th of August, 1898, held the office of municipal captain, *governadorcillo*, *alcalde*, *lieutenant*, *cabeza de barangay*, or member of any *ayuntamiento*; (*b*) those who own real property to the value of ₱500.00, or who annually pay ₱30.00 or more of the established taxes; and (*c*) those, who speak, read, and write English or Spanish.

When the 1935 Constitution was adopted, the minimum voting age was lowered to twenty-one (21) and the foregoing class qualification and property requirements were removed.[69] However, the literacy requirement was retained and only men who were able to read and write were given the right to vote.[70] It also made women's right to vote dependent on a plebiscite held for such purpose.[71]

During the 1971 Constitutional Convention, the delegates decided to remove the literacy and property requirements to broaden the political base and discontinue the exclusion of millions of citizens from the political systems:[72]

Sponsorship Speech of Delegate Manglapus

DELEGATE MANGLAPUS: Mr. President, the draft proposal, the subject matter of Report No. 11 contains amendments that are designed to improve Article V on suffrage and to broaden the electoral base of our country. The three main points that are taken up in this draft which will be developed in the sponsorship speeches that will follow might need explanatory remarks. x x x.

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[69] Section 1. Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are **able to read and write**, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question. (Emphasis supplied)

[70] *Id*.

[71] *Id*.

[72] Journal of the 1971 Constitutional Convention, Session No. 116, February 25, 1972, pp. 13-14.

x x x x x x x x x

(2) The present requirement, reading and writing, is eliminated and instead a provision is introduced which says, "**No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage**;"

x x x x x x x x x

The draft before us is in keeping with the trend towards the broadening of the electoral base already begun with the lowering of the voting age to 18, and it is in keeping further with the Committee's desire to discontinue the alienation and exclusion of millions of citizens from the political system and from participation in the political life of the country. The requirement of literacy for voting is eliminated for it is noted that there are very few countries left in the world where literacy remains a condition for voting. There is no Southeast Asian country that imposes this requirement. The United States Supreme Court only a few months ago declared unconstitutional any state law that would continue to impose this requirement for voting.

x x x x x x x x x

It is to be noted that all those who testified before the Committee **favoured the elimination of the literacy requirement**. It must be stressed that those witnesses represented all levels of society x x x.

Sponsorship Speech of Delegate Ordoñez

x x x in the process, as we evolve, many and more of our people were left to the sidelines because they could no longer participate in the process of government simply because their ability to read and write had become inadequate. This, however, did not mean that they were no longer responsive to the demands of the times, that they were unsensible to what was happening among them. And so in the process as years went on, conscious efforts were made to liberate, to free these persons who were formerly entitled in the course of election by means of whittling away the requirements for the exercise of the right to vote. **First of all, was the property requirement**. There were times in the English constitutional history that it was common to say as an answer to a question, "Who are entitled to vote?" that the following cannot vote - - criminals, paupers, members of the House of Lords. They were landed together at the same figurative category.

Eventually, with the wisdom of the times, property requirement was eliminated but the last remaining vestige which bound the members of the community to ignorance, which was the persistence of this requirement of literacy remained. And this is again preserved in our Constitution, in our Election Code, which provides that those who cannot prepare their ballots themselves shall not be qualified to vote.

x x x x x x x x x

Unless you remove this literacy test, the cultural minorities, the underprivileged, the urban guerrillas will forever be outcasts of our society, irresponsive of what is happening. And if this condition were to continue, my friends, we cannot fully claim that we have representative democracy. Let us reverse the cycle. Let us eliminate the social imbalance by granting to these persons who are very responsible the right to participate in the choice of the persons who are to make their laws for them. (Emphases supplied)

As clarified on interpellation, the phrase "other substantive requirement" carries the same tack as the other standards alienating particular classes based on socio-economic considerations irrelevant to suffrage, such as the payment of taxes. Moreover, as particularly noted and as will be later elaborated on, the phrase did not contemplate any restriction on procedural requirements, such as that of registration:

DELEGATE DE LOS REYES: On page 2, Line 3, the following appears:

> "For other substantive requirement, no literacy[,] property, or other substantive requirement shall be imposed on the exercise of suffrage."

just what is contemplated in the phrase, "substantive requirement?"

DELEGATE OCCEÑA: I can answer that, but it belongs to the sphere of someone else in the Committee. We use this term as distinguished from procedural requirements. **For instance, the law cannot come in and say that those who should be allowed to vote should have paid certain taxes**. That would be a substantial requirement in addition to what is provided for in the Constitution. **But the law can step in as far as certain procedural requirements are concerned like**

requiring registration, and also step in as far as these classifications are concerned.[73] (Emphases supplied)

As it finally turned out, the imposition of literacy, property, or other substantive requirement was proscribed and the following provision on suffrage was adopted[74] in the 1973 Constitution:

Section 1. Suffrage shall be exercised by citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election. **No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage**. The Batasang Pambansa shall provide a system for the purpose of securing the secrecy and sanctity of the vote. (Emphasis supplied)

After deliberating on and eventually, striking down a proposal to exclude literacy requirements from the limitation,[75] the exact

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[73] Journal of the 1971 Constitutional Convention, Session No. 116, February 25, 1972, p. 52.

[74] After a voting of 40 in favor, 2 against, and 1 abstention, the Commission approved the exclusion of literacy requirements from the limitations. (See Deliberations of the Constitutional Commission, dated July 22, 1986, Vol. II, p.101.)

[75] The 1987 Constitution retained the proscription on the imposition of literacy, property, or other substantive requirements, but during the deliberations, Commissioner Rama, proposed the restoration of the literacy requirement on the argument that for a strong electoral system, what was needed was not number, but intelligence of voters. He also pointed out that illiterates were manipulated by unscrupulous politicians and that their participation in the elections is inherently flawed because they cannot keep their votes secret as they need to be assisted in casting their votes. (See Deliberations of the Constitutional Commission, dated July 19, 1986, Vol. II, pp. 8-9.)

This proposition, however, was opposed by the majority, including Commissioner Bernas on the reason that reading and writing were not the only vehicles to acquire information and that the right of suffrage should not be held back from those who are unfortunate as to be unable to read and write. He further stated that illiteracy shows government's neglect of education and disenfranchising the illiterate would only aggravate the illiteracy because their voices will not be heard. (See Deliberations of the Constitutional Commission, dated July 19, 1986, Vol. II, pp.15-16.)

provision prohibiting the imposition of "**literacy, property, or other substantive requirement[s]**" in the 1973 Constitution was fully adopted in the 1987 Constitution.

Along the contours of this limitation then, Congress, pursuant to Section 118 of Batas Pambansa Bilang 881, or the Omnibus Election Code, among others, imposed the following legal disqualifications:

> Section 118. Disqualifications. – The following shall be disqualified from voting:
>
> (a) Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year, such disability not having been removed by plenary pardon or granted amnesty: Provided, however, That any person disqualified to vote under this paragraph shall automatically reacquire the right to vote upon expiration of five years after service of sentence.
>
> (b) Any person who has been adjudged by final judgment by competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law: Provided, That he shall regain his right to vote automatically upon expiration of five years after service of sentence.
>
> (c) Insane or incompetent persons as declared by competent authority.

A "qualification" is loosely defined as "the possession of qualities, properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function."[76]

Properly speaking, the concept of a "qualification", at least insofar as the discourse on suffrage is concerned, should be distinguished from the concept of "registration", which is jurisprudentially regarded as only the means by which a person's qualifications to vote is determined. In *Yra v. Abaño*,[77] citing

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[76] *Black's Law Dictionary,* 8th Ed., p. 1275.

[77] 52 Phil. 380 (1928).

Meffert v. Brown,[78] it was stated that "[t]he act of registering is only one step towards voting, and it is not one of the elements that makes the citizen a qualified voter [and] one may be a qualified voter without exercising the right to vote."[79] In said case, this Court definitively characterized registration as a form of regulation and not as a qualification for the right of suffrage:

Registration regulates the exercise of the right of suffrage. It is not a qualification for such right.[80] (Emphasis supplied)

As a form of regulation, compliance with the registration procedure is dutifully enjoined. Section 115 of the Omnibus Election Code provides:

Section 115. Necessity of Registration. - **In order that a qualified elector may vote in any election, plebiscite or referendum**, **he must be registered** in the permanent list of voters for the city or municipality in which he resides. (Emphasis supplied)

Thus, although one is deemed to be a "qualified elector," he must nonetheless still comply with the registration procedure in order to vote.

As the deliberations on the 1973 Constitution made clear, registration is a mere procedural requirement which does not fall under the limitation that "[n]o literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage." This was echoed in *AKBAYAN-Youth v. COMELEC*[81] (*AKBAYAN-Youth*), wherein the Court pronounced that the process of registration is a **procedural limitation** on the right to vote. Albeit procedural, the right of a citizen to vote nevertheless remains conditioned upon it:

Needless to say, the exercise of the right of suffrage, as in the enjoyment of all other rights, is subject to existing substantive and

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[78] 132 Ky. 201; 116 S.W. 779; 1909 Ky. LEXIS 133.

[79] *Yra v. Abaño*, *supra* note 77, at 384.

[80] *Id.* at 385.

[81] 407 Phil. 618 (2001).

procedural requirements embodied in our Constitution, statute books and other repositories of law. Thus, as to the substantive aspect, Section 1, Article V of the Constitution provides:

x x x x x x x x x

As to the procedural limitation, the right of a citizen to vote is necessarily conditioned upon certain procedural requirements he must undergo: among others, the process of registration. Specifically, a citizen in order to be qualified to exercise his right to vote, in addition to the minimum requirements set by the fundamental charter, is obliged by law to register, at present, under the provisions of Republic Act No. 8189, otherwise known as the Voters Registration Act of 1996.[82] (Emphasis and underscoring supplied)

RA 8189 primarily governs the process of registration. It defines "registration" as "the act of accomplishing and filing of a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides and including the same in the book of registered voters upon approval by the [ERB]."[83] As stated in Section 2 thereof, RA 8189 was passed in order "to systematize the present method of registration in order to establish a clean, complete, permanent and updated list of voters."

To complement RA 8189 in light of the advances in modern technology, RA 10367, or the assailed Biometrics Law, was signed into law in February 2013. It built on the policy considerations behind RA 8189 as it institutionalized biometrics validation as part of the registration process:

Section 1. Declaration of Policy. – It is the policy of the State to establish a clean, complete, permanent and updated list of voters through the adoption of biometric technology.

"*Biometrics* refers to a quantitative analysis that provides a positive identification of an individual such as voice, photograph, fingerprint, signature, iris, and/or such other identifiable features."[84]

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[82] *Id*. at 635-636.

[83] Section 3 (a), RA 8189.

[84] Section 2 (b), RA 10367.

Sections 3 and 10 of RA 10367 respectively require registered and new voters to submit themselves for biometrics validation:

> Section 3. Who Shall Submit for Validation. – Registered voters whose biometrics have not been captured shall submit themselves for validation.
>
> Section 10. Mandatory Biometrics Registration. – The Commission shall implement a mandatory biometrics registration system for new voters.

Under Section 2 (d) of RA 10367, "*validation*" is defined as "the process of taking the biometrics of registered voters whose biometrics have not yet been captured."

The consequence of non-compliance is "*deactivation*," which "refers to the removal of the registration record of the registered voter from the corresponding precinct book of voters for failure to comply with the validation process as required by [RA 10367]."[85] Section 7 states:

> Section 7. Deactivation. – **Voters who fail to submit for validation** on or before the last day of filing of application for registration for purposes of the May 2016 elections **shall be deactivated** pursuant to this Act. (Emphases supplied)

Notably, the penalty of deactivation, as well as the requirement of validation, **neutrally applies to all voters**. Thus, petitioners' argument that the law creates artificial class of voters[86] is more imagined than real. There is no favor accorded to an "obedient group." If anything, non-compliance by the "disobedient" only rightfully results into prescribed consequences. Surely, this is beyond the intended mantle of the equal protection of the laws, which only works "against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality."[87]

It should also be pointed out that deactivation is not novel to RA 10367. RA 8189 already provides for certain grounds

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[85] Section 2 (e), RA 10367.

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

[87] See *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957).

for deactivation, of which not only the disqualifications under the Constitution or the Omnibus Election are listed.

Section 27. Deactivation of Registration. The board shall deactivate the registration and remove the registration records of the following persons from the corresponding precinct book of voters and place the same, properly marked and dated in indelible ink, in the inactive file after entering the cause or causes of deactivation:

a) Any person who has been sentenced by final judgment to suffer imprisonment for not less than one (1) year, such disability not having been removed by plenary pardon or amnesty: Provided, however, That any person disqualified to vote under this paragraph shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence as certified by the clerks of courts of the Municipal/Municipal Circuit/Metropolitan/Regional Trial Courts and the *Sandiganbayan*;

b) Any person who has been adjudged by final judgment by a competent court or tribunal of having caused/committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law; Provided, That he shall regain his right to vote automatically upon expiration of five (5) years after service of sentence;

c) Any person declared by competent authority to be insane or incompetent unless such disqualification has been subsequently removed by a declaration of a proper authority that such person is no longer insane or incompetent;

d) Any person who did not vote in the two (2) successive preceding regular elections as shown by their voting records. For this purpose, regular elections do not include the *Sangguniang Kabataan* (SK) elections;

e) Any person whose registration has been ordered excluded by the Court; and

f) Any person who has lost his Filipino citizenship.

For this purpose, the clerks of court for the Municipal/Municipal Circuit/Metropolitan/Regional Trial Courts and the *Sandiganbayan* shall furnish the Election Officer of the city or municipality concerned

at the end of each month a certified list of persons who are disqualified under paragraph (a) hereof, with their addresses. The Commission may request a certified list of persons who have lost their Filipino Citizenship or declared as insane or incompetent with their addresses from other government agencies.

The Election Officer shall post in the bulletin board of his office a certified list of those persons whose registration were deactivated and the reasons therefor, and furnish copies thereof to the local heads of political parties, the national central file, provincial file, and the voter concerned.

With these considerations in mind, petitioners' claim that biometrics validation imposed under RA 10367, and implemented under COMELEC Resolution Nos. 9721, 9863, and 10013, must perforce fail. To reiterate, this requirement is not a "qualification" to the exercise of the right of suffrage, but a mere aspect of the registration procedure, of which the State has the right to reasonably regulate. It was institutionalized conformant to the limitations of the 1987 Constitution and is a mere complement to the existing Voter's Registration Act of 1996. Petitioners would do well to be reminded of this Court's pronouncement in *AKBAYAN-Youth*, wherein it was held that:

[T]he act of registration is an indispensable precondition to the right of suffrage. For registration is part and parcel of the right to vote and an indispensable element in the election process. Thus, contrary to petitioners' argument, registration cannot and should not be denigrated to the lowly stature of a mere statutory requirement. **Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election**, to the incidental yet generally important end, that even pre-election activities could be performed by the duly constituted authorities in a realistic and orderly manner - one which is not indifferent and so far removed from the pressing order of the day and the prevalent circumstances of the times.[88] (Emphasis and underscoring supplied)

[88] *Akbayan-Youth v. COMELEC*, *Supra* note 81, at 636.

Thus, unless it is shown that a registration requirement rises to the level of a literacy, property or other substantive requirement as contemplated by the Framers of the Constitution – that is, one which propagates a socio-economic standard which is bereft of any rational basis to a person's ability to intelligently cast his vote and to further the public good – the same cannot be struck down as unconstitutional, as in this case.

III.

For another, petitioners assert that biometrics validation gravely violates the Constitution, considering that, applying the strict scrutiny test, it is not poised with a compelling reason for state regulation and hence, an unreasonable deprivation of the right to suffrage.[89] They cite the case of *White Light Corp. v. City of Manila*[90] (*White Light*), wherein the Court stated that the scope of the strict scrutiny test covers the protection of the right of suffrage.[91]

Contrary to petitioners' assertion, the regulation passes the strict scrutiny test.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.[92] As pointed out by petitioners, the United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access, and interstate travel.[93]

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[89] *Rollo*, pp. 22-24.

[90] 596 Phil. 444 (2009).

[91] *Id.* at 463.

[92] *Id.*

[93] *Id.*

Applying strict scrutiny, the focus is **on the presence of compelling, rather than substantial, governmental interest** and **on the absence of less restrictive means for achieving that interest**,[94] and the burden befalls upon the State to prove the same.[95]

In this case, respondents have shown that the biometrics validation requirement under RA 10367 advances a compelling state interest. It was precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing – if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants. According to the sponsorship speech of Senator Aquilino L. Pimentel III, the objective of the law was to cleanse the national voter registry so as to eliminate electoral fraud and ensure that the results of the elections were truly reflective of the genuine will of the people.[96] The foregoing consideration is unquestionably a compelling state interest.

Also, it was shown that the regulation is the least restrictive means for achieving the above-said interest. Section 6[97] of

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[94] *Id.*

[95] See Concurring Opinion of Justice Teresita J. Leonardo-De Castro in *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 699 SCRA 352, 450. See also Separate Concurring Opinion of Chief Justice Reynato S. Puno in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 106 (2010).

[96] See Sponsorship Speech of Senator Aquilino L. Pimentel III in Senate Bill 1030. Records of the Senate, Vol. III, No. 26, October 16, 2012, p. 64.

[97] Section 6. Procedure for validation.

a. The voter shall personally appear before the OEO/satellite office.

b. Based on the list of voters without or with incomplete biometrics, the EO shall conduct an initial interview on the personal circumstances and in order to establish the identity of the voter shall require him to present any of the following documents:

1. Current employees identification card (ID), with the signature of the employer or authorized representative;
2. Postal ID;
3. Students ID or library card, signed by the school authority;
4. Senior Citizens ID;

Resolution No. 9721 sets the procedure for biometrics validation, whereby the registered voter is only required to: (*a*) personally appear before the Office of the Election Officer; (*b*) present a competent evidence of identity; and (*c*) have his photo, signature, and fingerprints recorded. It is, in effect, a manner of updating one's registration for those already registered under RA 8189, or a first-time registration for new registrants. The re-registration process is amply justified by the fact that the government is adopting a novel technology like biometrics in order to address the bane of electoral fraud that has enduringly plagued the electoral exercises in this country. While registrants may be inconvenienced by waiting in long lines or by not being accommodated on certain days due to heavy volume of work, these are typical burdens of voting that are remedied by bureaucratic improvements to be implemented by the COMELEC as an administrative institution. By and large, the COMELEC

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5. Drivers license;
6. NBI/PNP clearance;
7. Passport;
8. SSS/GSIS ID;
9. Integrated Bar of the Philippines (IBP) ID;
10. License issued by the Professional Regulatory Commission (PRC) and;
11. Any other valid ID.

c. The identity of the voter having been established, the EO shall verify in the database his record whether he has no/incomplete BIOMETRICS data. If the applicant has no or incomplete BIOMETRICS data, the EO shall record in the logbook the following data: 1) date and time; 2) the name of the voter; and 3) VRR number. After which, the EO shall direct the voter to the VRM Operator. The VRM Operator shall:

1. Click "Select File", then click " Other Application" then click "List of Records."
2. Type the last name and/or first name and/or maternal name in the space provided and click SEARCH button.
3. Right-click in the record of the voter and select VALIDATION from the list of application type.
4. Click on the BIOMETRICS tab.
5. Capture the photo, signature and fingerprints of the voter.
6. Save the record.

d. The voter shall be instructed to affix his signature in the logbook. (See *rollo*, pp. 47-48.)

has not turned a blind eye to these realities. It has tried to account for the exigencies by holding continuous registration as early as May 6, 2014 until October 31, 2015, or for over a period of 18 months. To make the validation process as convenient as possible, the COMELEC even went to the extent of setting up off-site and satellite biometrics registration in shopping malls and conducted the same on Sundays.[98] Moreover, it deserves mentioning that RA 10367 and Resolution No. 9721 did not mandate registered voters to submit themselves to validation every time there is an election. In fact, it only required the voter to undergo the validation process one (1) time, which shall remain effective in succeeding elections, provided that he remains an active voter. To add, the failure to validate did not preclude deactivated voters from exercising their right to vote in the succeeding elections. To rectify such status, they could still apply for reactivation[99] following the procedure laid down in Section 28[100] of RA 8189.

That being said, the assailed regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete,

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

[99] Section 8 of RA 10367 reads:

Section 8. Reactivation. – Those deactivated under the preceding section may apply for reactivation after the May 2016 elections following the procedure provided in Section 28 of Republic Act No. 8189.

[100] Section 28 of RA 8189 reads:

Section 28. Reactivation of Registration. – Any voter whose registration has been deactivated pursuant to the preceding Section may file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating that the grounds for the deactivation no longer exist any time but not later than one hundred twenty (120) days before a regular election and ninety (90) days before a special election.

The Election Officer shall submit said application to the Election Registration Board for appropriate action.

In case the application is approved, the Election Officer shall retrieve the registration record from the inactive file and include the same in the corresponding precinct book of voters. Local heads or representatives of political parties shall be properly notified on approved applications.

permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest.[101]

IV.

Petitioners further aver that RA 10367 and the COMELEC Resolution Nos. 9721, 9863, and 10013 violate the tenets of procedural due process because of the short periods of time between hearings and notice, and the summary nature of the deactivation proceedings.[102]

Petitioners are mistaken.

At the outset, it should be pointed out that the COMELEC, through Resolution No. 10013, had directed EOs to: (*a*) "[p]ost the lists of voters without biometrics data in the bulletin boards of the City/Municipal hall, Office of the Election Officer and in the barangay hall along with the notice of ERB hearing;" and (*b*) "[s]end individual notices to the affected voters included in the generated list of voters without biometrics data."[103] The same Resolution also accords concerned individuals the opportunity to file their opposition/objection to the deactivation of VRRs not later than November 9, 2015 in accordance with the period prescribed in Section 4,[104] Chapter I, Resolution No.

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[101] See *Social Weather Stations, Inc. v. COMELEC*, G.R. No. 208062, April 7, 2015.

[102] See *Rollo*, pp. 26-28.

[103] See Item A (3) and (5) of Resolution No. 10013; *id*. at 57.

[104] Section 4. Hearing and approval/disapproval of applications. – The applications shall be heard by the Election Registration Board (Board) at the [Office of the Election Officer (OEO)], in accordance with the following schedule:

Period to file applications	Last day to post Notice of Hearing with Lists of Applicant	Last day to file opposition to applications	Hearing and Approval/ Disapproval of applications
May 6 to June 30, 2014	July 7, 2014	July 14, 2014	July 21, 2014
July 1 to September 30, 2014	October 6, 2014	October 13, 2014	October 20, 2014

9853. Meanwhile, Resolution Nos. 9721 and 9863 respectively state that "[d]eactivation x x x shall comply with the requirements on posting, ERB hearing and service of individual notices to the deactivated voters,"[105] and that the "[d]eactivation for cases falling under this ground shall be made during the November 16, 2015 Board hearing."[106] While the proceedings are summary in nature, the urgency of finalizing the voters' list for the upcoming May 2016 Elections calls for swift and immediate action on the deactivation of VRRs of voters who fail to comply with the mandate of RA 10367. After all, in the preparation for the May 2016 National and Local Elections, time is of the essence. The summary nature of the proceedings does not depart from the fact that petitioners were given the opportunity to be heard.

Relatedly, it deserves emphasis that the public has been sufficiently informed of the implementation of RA 10367 and its deactivation feature. RA 10367 was duly published as early as February 22, 2013,[107] and took effect fifteen (15) days after.[108] Accordingly, dating to the day of its publications, all are bound to know the terms of its provisions, including the consequences of non-compliance. As implemented, the process of biometrics validation commenced on July 1, 2013, or approximately two

October 1 to December 20, 2014	January 5, 2015	January 12, 2015	January 19, 2015
January 5 to March 31, 2015	April 6, 2015	April 13, 2015	April 20, 2015
April 1 to June 30, 2015	July 6, 2015	July 13, 2015	July 20, 2015
July 1 to September 30, 2015	October 5, 2015	October 12, 2015	October 19, 2015
October 1 to 31, 2015	November 4, 2015	November 9, 2015	November 16, 2015

If the last day to post notice, file oppositions and hearing for approval/ disapproval falls on a holiday or a non-working day, the same shall be done on the next working day.

[105] See Section 8 of Resolution No. 9721; *rollo*, p. 48.

[106] See Item B (2) (a.7) of Resolution No. 9863; *id.* at 53.

[107] RA 10367 was published in the February 22, 2013 issues of Manila Bulletin and Philippine Star.

[108] See Section 15 of RA 10367.

and a half (2½) years before the October 31, 2015 deadline. To add, the COMELEC conducted a massive public information campaign, *i.e.*, *NoBio- NoBoto*, from May 2014 until October 31, 2015, or a period of eighteen (18) months, whereby voters were reminded to update and validate their registration records. On top of that, the COMELEC exerted efforts to make the validation process more convenient for the public as it enlisted the assistance of malls across Metro Manila to serve as satellite registration centers and declared Sundays as working days for COMELEC offices within the National Capital Region and in highly urbanized cities.[109] Considering these steps, the Court finds that the public has been sufficiently apprised of the implementation of RA 10367, and its penalty of deactivation in case of failure to comply. Thus, there was no violation of procedural due process.

V.

Petitioners aver that the poor experience of other countries – *i.e.*, Guatemala, Britain, Côte d'Ivoire, Uganda, and Kenya – in implementing biometrics registration should serve as warning in adhering to the system. They highlighted the inherent difficulties in launching the same such as environmental and geographical challenges, lack of training and skills, mechanical breakdown, and the need for re-registration. They even admitted that while biometrics may address electoral fraud caused by multiple registrants, it does not, however, solve other election-related problems such as vote-buying and source-code manipulation.[110]

Aside from treading on mere speculation, the insinuations are improper. Clearly, petitioners' submissions principally assail the wisdom of the legislature in adopting the biometrics registration system in curbing electoral fraud. In this relation, it is significant to point out that questions relating to the wisdom, morality, or practicability of statutes are policy matters

[109] *Rollo*, p. 79.
[110] *Id.* at 28-31.

that should not be addressed to the judiciary. As elucidated in the case of *Fariñas v. The Executive Secretary*:[111]

> **[P]olicy matters are not the concern of the Court**. Government policy is within the exclusive dominion of the political branches of the government. **It is not for this Court to look into the wisdom or propriety of legislative determination**. Indeed, whether an enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the serious conflict of opinions does not suffice to bring them within the range of judicial cognizance.[112] (Emphases and underscoring supplied)

In the exercise of its legislative power, Congress has a wide latitude of discretion to enact laws, such as RA 10367, to combat electoral fraud which, in this case, was through the establishment of an updated voter registry. In making such choices to achieve its desired result, Congress has necessarily sifted through the policy's wisdom, which this Court has no authority to review, much less reverse.[113] Whether RA 10367 was wise or unwise, or was the best means in curtailing electoral fraud is a question that does not present a justiciable issue cognizable by the courts. Indeed, the reason behind the legislature's choice of adopting biometrics registration notwithstanding the experience of foreign countries, the difficulties in its implementation, or its concomitant failure to address equally pressing election problems, is essentially a policy question and, hence, beyond the pale of judicial scrutiny.

VI.

Finally, petitioners' proffer that Resolution No. 9863 which fixed the deadline for validation on October 31, 2015 violates Section 8 of RA 8189 which states:

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[111] See 463 Phil. 179 (2003).

[112] *Id*. at 204.

[113] See *Magtajas v. Pryce Properties Corporation,* G.R. No. 111097, July 20, 1994, 234 SCRA 255, 268.

Section 8. System of Continuing Registration of Voters. – The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours. **No registration shall, however, be conducted during the period starting one hundred twenty (120) days before a regular election and ninety (90) days before a special election**. (Emphasis added.)

The position is, once more, wrong.

Aside from committing forum shopping by raising this issue despite already being subject of a prior petition filed before this Court, *i.e.*, G.R. No. 220918,[114] petitioners fail to consider that the 120- and 90-day periods stated therein refer to the prohibitive period beyond which voter registration may no longer be conducted. As already resolved in this Court's Resolution dated December 8, 2015 in G.R. No. 220918, the subject provision does not mandate COMELEC to conduct voter registration up to such time; rather, it only provides a period which may not be reduced, but may be extended depending on the administrative necessities and other exigencies.[115] Verily, as the constitutional body tasked to enforce and implement election laws, the COMELEC has the power to promulgate the necessary rules and regulations to fulfil its mandate.[116] Perforce, this power includes the determination of the periods to accomplish certain pre-election acts,[117] such as voter registration.

At this conclusory juncture, this Court reiterates that voter registration does not begin and end with the filing of applications which, in reality, is just the initial phase that must be followed by the approval of applications by the ERB.[118] Thereafter, the

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[114] Entitled "*Kabataan Partylist v. COMELEC*."

[115] See Notice of Resolution in *Kabataan Partylist v. COMELEC*, G.R. No. 220918, December 8, 2015, citing *AKLAT v. COMELEC*, 471 Phil. 730, 738 (2004).

[116] *Id.*

[117] *Id.*

[118] See Notice of Resolution in *Kabataan Partylist v. COMELEC*, G.R. No. 220918, December 8, 2015.

process of filing petitions for inclusion and exclusion follows. These steps are necessary for the generation of the final list of voters which, in turn, is a pre-requisite for the preparation and completion of the Project of Precincts (POP) that is vital for the actual elections. The POP contains the number of registered voters in each precinct and clustered precinct, the names of the barangays, municipalities, cities, provinces, legislative districts, and regions included in the precincts, and the names and locations of polling centers where each precinct and clustered precinct are assigned.[119] The POP is necessary to determine the total number of boards of election inspectors to be constituted, the allocation of forms and supplies to be procured for the election day, the number of vote counting machines and other paraphernalia to be deployed, and the budget needed. More importantly, the POP will be used as the basis for the finalization of the Election Management System (EMS) which generates the templates of the official ballots and determines the voting jurisdiction of legislative districts, cities, municipalities, and provinces.[120] The EMS determines the configuration of the canvassing and consolidation system for each voting jurisdiction. Accordingly, as the constitutional body specifically charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall,[121] the COMELEC should be given sufficient leeway in accounting for the exigencies of the upcoming elections. In fine, its measures therefor should be respected, unless it is clearly shown that the same are devoid of any reasonable justification.

WHEREFORE, the petition is **DISMISSED** due to lack of merit. The temporary restraining order issued by this Court on December 1, 2015 is consequently **DISSOLVED**.

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[119] See *rollo*, p. 72.

[120] See *id.* at 73.

[121] See Section 2 (1), Article IX-C of the 1987 Constitution.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I concur.

Republic Act No. 10367[1] is a valid regulation that assists in the identification of a person for purposes of ensuring that the right to vote is exercised only by that person. It is also a measure to purge the voters list of spurious names or ghost voters.

Viewed this way, Republic Act No. 10367 is not a burden on the right of suffrage; rather, it enhances this fundamental right. It provides mechanisms to ensure the identity of the voter, prevent multiple votes for a single individual, and deter the casting of ballots in the names of persons who do not actually exist or who, at the time of the elections, are already deceased.

The requirement of biometric registration, therefore, is not an additional qualification but rather a means to ensure and protect the identity of the voter. Names are deactivated because these do not correspond to real persons. Thus, there is no disqualification in as much as fictitious names or names of the deceased do not represent real persons. host cannot be disqualified because it does not exist.

Finally, petitioners failed to establish the actual and concrete facts that entitle them standing to question the constitutionality of the law and the Commission on Elections' implementing regulations. I agree with the ponencia that constitutional objections should be presented with more rigor than broad political

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[1] Entitled "An Act Providing for Mandatory Biometrics Voter Registration." The law was approved on February 15, 2013.

advocacies. The experiences of other emerging economies cited in the Petition may be instructive for context,[2] but they are certainly insufficient by themselves for this court to veto political acts of Congress, the President, and the Commission on Elections in the guise of judicial review. This court is more circumspect. We attend to legal arguments grounded on the actual controversies substantially and materially experienced by a petitioner. We do not have license to be moved solely by the passion of advocacy.

The vigilance of petitioners is to be commended except that it comes too late. The law was passed in 2013 and implemented shortly thereafter.[3] On May 2014, the "No Bio, No Boto" public information campaign was launched together with the period of continuing registration.[4] There was sufficient time for people to comply, and notices appear to have been sufficient. If there were those whose biometric information was incomplete, a remedy was provided. For those who did not act early enough, their registration can still be accommodated in future elections. For the names delisted because these do not correspond to live persons, any amount of information will not result in a solution. Their names deserve to be deactivated.

ACCORDINGLY, I vote to **DISMISS** the Petition and **DISSOLVE** the temporary restraining order.

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[2] *See* Decision, p. 22.

[3] Decision, p. 4. *See* Republic Act No. 10367.

[4] *See* Commission on Elections Resolution No. 9863, Item B (2a) (7) of Resolution No. 9863; Decision p. 4.

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—— Limited to a review of questions of law. (Morillo *vs.* People, G.R. No. 198270, Dec. 9, 2015) p. 192

—— Only errors of law are allowed except when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (Enchanted Kingdom, Inc. *vs.* Verzo, G.R. No. 209559, Dec. 9, 2015) p. 388

Petition for review under Rule 43 of the Rules of Court –– Must be taken against a judgment, final order, resolution or award of a quasi-judicial agency in the exercise of its quasi-judicial functions. (Narra Nickel Mining and Dev't. Corp. *vs*. Redmont Consolidated Mines Corp., G.R. No. 202877, Dec. 9, 2015) p. 238

–– Resort thereto was proper to assail the resolution of the Civil Service Commission. (CSC *vs*. Magoyag, G.R. No. 197792, Dec. 9, 2015) p. 182

–– The resolutions issued by petitioner are not mere responses to a request but are actually quasi-judicial actions because the result of those resolutions is the denial of a right of the respondent as conferred by the court. (*Id.*)

Question of law — A question involving the proper interpretation of the rules and jurisprudence with respect to the jurisdiction of courts to entertain complaints filed with it is a question of law. (Morillo *vs*. People, G.R. No. 198270, Dec. 9, 2015) p. 192

–– Includes the issue of whether the Regional Trial Court erred in rendering summary judgment. (Rep. of the Phils., represented by the Bureau of Customs *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 209324, Dec. 9, 2015) p. 361

–– The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. (*Id.*)

Relief –– Appellate court cannot grant a prayer of relief not prayed nor argued for in the Regional Trial Court. (Nolasco *vs.* Cuerpo, G.R. No. 210215, Dec. 9, 2015) p. 410

Right to appeal ––Remedy against a Regional Trial Court declaration of default. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

—— The proper remedy for a final order that completely disposes of the case. (Abadilla, Jr. *vs.* Sps. Obrero, G.R. No. 210855, Dec. 9, 2015) p. 419

BILL OF RIGHTS

Right of suffrage —— One must meet the following qualifications in order to exercise the right of suffrage: first, he must be a Filipino citizen; second, he must not be disqualified by law; and third, he must have resided in the Philippines for at least one (1) year and in the place wherein he proposes to vote for at least six (6) months immediately preceding the election. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

BOUNCING CHECKS LAW (B.P. BLG. 22)

Violation of —— Categorized as transitory or continuing crime and the person charged with the crime may be validly tried in any municipality or territory where the offense was in part committed. (Morillo *vs.* People, G.R. No. 198270, Dec. 9, 2015) p. 192

—— The court of the place where the check was deposited or presented for encashment can be vested with jurisdiction to try the case. (*Id.*)

CERTIORARI

Petition for —— A pending petition therefor shall not stay the judgment or order that it assails unless a temporary restraining order or a writ of preliminary injunction is issued. (De Ocampo *vs*. RPN9/Radio Phils. Network, Inc., G.R. No. 192947, Dec. 9, 2015) p. 169

—— Lies against the order of the Regional Trial Court which granted an injunction at the initial stage of the case which amounted to the prejudgment of the merits of the case as it was a blatant violation of the rights of the parties to be heard. (The City of Iloilo, represented by Hon. Treñas *vs*. Judge Honrado, G.R. No. 160399, Dec. 9, 2015) p. 21

—— May be availed of in labor cases when there is a showing that the National Labor Relations Commission committed a grave abuse of discretion, for its findings and conclusions are not supported by substantial evidence. (Vicmar Dev't. Corp. and/or Kua *vs*. Elarcosa, G.R. No. 202215, Dec. 9, 2015) p. 218

—— May be availed of to assail a judgment of acquittal when in acquitting the accused, the lower court committed grave abuse of discretion. (Morillo *vs.* People, G.R. No. 198270, Dec. 9, 2015) p. 192

COMMISSION ON ELECTIONS

Powers —— As the constitutional body specifically charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, the measures it adopted for voter registration should be respected, unless it is clearly shown that the same are devoid of any reasonable justification. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP)

Notice of coverage —— A letter informing a landowner that his/her land is covered by CARP, and is subject to acquisition and distribution to beneficiaries, and that he/she has rights under the law, including the right to retain 5 hectares which is designed to comply with the requirements of administrative due process. (DAR *vs.* Robles, G.R. No. 190482, Dec. 9, 2015) p. 133

CONTRACTS

Construction agreement —— Petitioner construction company is entitled to an extension of 21 days for the delay in view of the presence of layers of concrete slabs and extra soft condition of the soil that were discovered during the excavation stage. (BF Corp. *vs.* Werdenberg International Corp., G.R. No. 174387, Dec. 9, 2015) p. 55

—— Petitioner is entitled to an extension of 38 days for the delay in securing the building permit and for the stop work order issued by the city hall. (*Id.*)

—— Petitioner is entitled to an extension of 40 days for the change orders and extra works. (*Id.*)

—— Respondent is entitled to a 10% retention fee which is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work–if any–becomes necessary. (*Id.*)

Fixed lump sum contracts —— The project owner's liability to the contractor is generally limited to what is stipulated therein as any change therein requires written authority from him and agreement by the parties. (Filinvest Alabang, Inc. *vs.* Century Iron Works, Inc., G.R. No. 213229, Dec. 9, 2015) p. 472

Form of —— A contract transmitting or extinguishing real rights over immovable property should be in a public document, however, the failure to observe the proper form does not render the transaction invalid but valid and binding among the parties. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

Government or public contract —— A financial or technical assistance agreement is classified as a government or public contract which is generally subject to the same laws and regulations governing the validity and sufficiency of contracts between private individuals. (Narra Nickel Mining and Dev't. Corp. *vs.* Redmont Consolidated Mines Corp., G.R. No. 202877, Dec. 9, 2015) p. 238

Rescission of —— Rescission under Art. 1191 of the Civil Code requires the mutual restitution of the benefits received. (ASB Realty Corp. *vs.* Ortigas & Co. Ltd. Partnership, G.R. No. 202947, Dec. 9, 2015) p. 262

Unenforceable contract ——A contract executed by an agent with revoked authority is unenforceable. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

CORPORATIONS

Doctrine of piercing the veil of corporate fiction –– When it appears that business enterprises are owned, conducted and controlled by the same parties, law and equity will disregard the legal fiction that these corporations are distinct entities and shall treat them as one. (Vicmar Dev't. Corp. and/or Kua vs. Elarcosa, G.R. No. 202215, Dec. 9, 2015) p. 218

DAMAGES

Legal interest –– Twelve percent (12%) per annum from extrajudicial demand until June 30, 2013 and six percent (6%) per annum thereafter until full payment, in accordance with recent jurisprudence. (Filinvest Alabang, Inc. *vs.* Century Iron Works, Inc., G.R. No. 213229, Dec. 9, 2015) p. 472

Liquidated damages –– Respondent is entitled to liquidated damages equivalent to 18 days of delay. (BF Corp. *vs.* Werdenberg International Corp., G.R. No. 174387, Dec. 9, 2015) p. 55

DENIAL

Defense of –– Cannot prevail over complainant's direct, positive and categorical assertion. (People *vs.* Roaquin *y* Navarro, G.R. No. 215201, Dec. 9, 2015) p. 502

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction –– The DARAB jurisdiction over agrarian disputes where tenancy relationship exists between the parties and other agrarian reform matters. (DAR *vs.* Robles, G.R. No. 190482, Dec. 9, 2015) p. 133

DOUBLE JEOPARDY

Right against –– An appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if: (1) the dismissal is made upon motion, or with the express consent of the

defendant; (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant. (Morillo *vs.* People, G.R. No. 198270, Dec. 9, 2015) p. 192

ELECTION LAWS

COMELEC Resolution No. 9721 –– On the procedure for biometrics validation requirement is justified as it was narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters and it was demonstrably the least restrictive means in promoting that interest. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

R.A. No. 8189 –– Governs the process of registration of voters. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

R.A. No. 9863 –– Fixing the deadline for validation did not violate Sec. 8 of R.A. No. 8189 on the system for continuing registration of voters. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

R.A. No. 10367 –– Biometrics validation requirement advances a compelling state interest to facilitate the conduct of orderly, honest, and credible elections. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

–– Registered and new voters are required to submit themselves for biometrics validation, otherwise, their voter's record shall be deactivated. (*Id.*)

R.A. No. 10367 and related COMELEC resolutions –– There is no violation of procedural due process as the summary nature of the proceedings does not depart from the fact that the opportunity to be heard was given and the public

has been sufficiently appraised. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

EMPLOYEES

Probationary employee — As long as the probationary employee is given a reasonable time and opportunity to be made fully aware of what is expected of him during the early phases of the probationary period, the requirement of the law has been satisfied. (Enchanted Kingdom, Inc. *vs.* Verzo, G.R. No. 209559, Dec. 9, 2015) p. 388

–– Enjoys security of tenure like a regular employee, however, aside from just or authorized causes, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement. (*Id.*)

–– Expected to abide by the working hours imposed by the employer. (*Id.*)

–– Failure to inform the probationary employee of the standards for regularization at the time of engagement will render the employee regular except when the job is self-descriptive. (*Id.*)

–– One who, for a given period of time, is being observed and evaluated to determine whether or not he is qualified for permanent employment. (*Id.*)

Regular employee –– Art. 280 of the Labor Code defines a regular employee as one who is 1) engaged to perform tasks usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or 2) has rendered at least 1 year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists. (Vicmar Dev't. Corp. and/or Kua vs. Elarcosa, G.R. No. 202215, Dec. 9, 2015) p. 218

—— The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade. (*Id.*)

EMPLOYMENT

Right of management —— Management has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. (Enchanted Kingdom, Inc. *vs.* Verzo, G.R. No. 209559, Dec. 9, 2015) p. 388

EMPLOYMENT, TERMINATION OF

Abandonment as a ground —— To constitute abandonment of work, two (2) elements must be present: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. (Tatel *vs.* JLFP Investigation and Security Agency, Inc., G.R. No. 206942, Dec. 9, 2015) p. 320

—— To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. (*Id.*)

Backwages or separation pay —— An employee who is unjustly dismissed shall be entitled to either backwages or separation pay. (Tatel *vs.* JLFP Investigation and Security Agency, Inc., G.R. No. 206942, Dec. 9, 2015) p. 320

Constructive dismissal —— Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six (6) months. (Tatel *vs.* JLFP Investigation and Security Agency, Inc., G.R. No. 206942, Dec. 9, 2015) p. 320

Dismissal —— The burden of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal,

rests on the employer. (Tatel *vs.* JLFP Investigation and Security Agency, Inc., G.R. No. 206942, Dec. 9, 2015) p. 320

Notice — If the termination is brought about by the failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination. (Enchanted Kingdom, Inc. *vs.* Verzo, G.R. No. 209559, Dec. 9, 2015) p. 388

ESTOPPEL

Doctrine of — Failure to assert a right within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (De Ocampo *vs.* RPN-9/Radio Phils. Network, Inc., G.R. No. 192947, Dec. 9, 2015) p. 169

— Has the purpose of forbidding a party to speak against his own act or omission, representation, or commitment to the injury of another to whom the act, omission, representation, or commitment was directed and who reasonably relied thereon. (ASB Realty Corp. *vs.* Ortigas & Co. Ltd. Partnership, G.R. No. 202947, Dec. 9, 2015) p. 262

EVIDENCE

Private document — A deed of sale, the genuineness and due execution of which is not duly established by proof, can be considered non-existent. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

EXEMPTING CIRCUMSTANCES

Acting under an impulse of uncontrollable fear — The duress, force or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm of the act to be done. (Manansala *vs.* People, G.R. No. 215424, Dec. 9, 2015) p. 514

FALSIFICATION OF PRIVATE DOCUMENTS

Commission of — The elements under Art. 171 (4) of the Revised Penal Code are as follows: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by him are absolutely false. (Manansala *vs.* People, G.R. No. 215424, Dec. 9, 2015) p. 514

— The elements under Art. 172 (2) of the Revised Penal Code are: (a) that the offender committed any of the acts of falsification, except those in Art. 171 (7) of the same Code; (b) that the falsification was committed in any private document; and (c) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage. (*Id.*)

Penalty — In the absence of any mitigating circumstance and considering the provisions of the Indeterminate Sentence Law, accused is sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum. (Manansala *vs.* People, G.R. No. 215424, Dec. 9, 2015) p. 514

INDETERMINATE SENTENCE LAW

Indeterminate sentence — The minimum and maximum penalties to be imposed should, themselves, be determinate. (Panganiban *vs.* People, G.R. No. 211543, Dec. 9, 2015) p. 428

INFORMATION

Sufficiency of — An information that fails to allege that the offense was committed while the victim was unconscious is deemed cured by failure of the accused to question the sufficiency of the information and to object to the presentation of evidence tending to establish that the crime was committed through such means. (People *vs.* Lagangga *y* Dumpa, G.R. No. 207633, Dec. 9, 2015) p. 335

INJUNCTIONS

Writ of preliminary injunction — Sec. 3, Rule 58 of the *Rules of Court* set the guidelines when the issuance of a writ of preliminary injunction is justified, namely: (a) when the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or (b) when the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) when a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. (The City of Iloilo, represented by Hon. Treñas *vs.* Judge Honrado, G.R. No. 160399, Dec. 9, 2015) p. 21

INSURANCE

Counterbond — An insurance company cannot evade liability under the counterbond by hiding behind its own internal rules as the officers who signed the bonds were presumed to be acting within the scope of their authority in behalf of the company. (Capital Insurance and Surety Co., Inc. *vs.* Del Monte Motor Works, Inc., G.R. No. 159979, Dec. 9, 2015) p. 1

Obligations of an insurer — An insurance company who claimed that the counterbond was invalid has the burden of proving such defense. (Capital Insurance and Surety Co., Inc. *vs.* Del Monte Motor Works, Inc., G.R. No. 159979, Dec. 9, 2015) p. 1

—— Basic tenets of honesty, good faith, and fair dealing require an insurance company to communicate relevant facts to the assured. (*Id.*)

INSURANCE CODE

Section 203 of –– Refusal of the Insurance Commissioner to release the security deposit despite the garnishment on execution is legally justified. (Capital Insurance and Surety Co., Inc. *vs.* Del Monte Motor Works, Inc., G.R. No. 159979, Dec. 9, 2015) p. 1

–– The security deposit is exempt from levy by a judgment creditor or any other claimant. (*Id.*)

JUDGMENTS

Doctrine of finality of judgment –– Grounded on fundamental considerations of public policy and sound practice. (CSC *vs*. Magoyag, G.R. No. 197792, Dec. 9, 2015) p. 182

Execution of –– Sec. 27 of Rule 39 of the Rules of Court enumerates the persons who may exercise the right of redemption of a foreclosed property: (a) the judgment obligor or his successor in interest in the whole or any part of the property; and (c) a creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

Immutability of judgments –– Where a petition for *certiorari* is erroneously filed way beyond the reglementary period within which to perfect an ordinary appeal, the subject decision becomes final and the doctrine of immutability of judgments sets in. (Abadilla, Jr. *vs.* Sps. Obrero, G.R. No. 210855, Dec. 9, 2015) p. 419

Principle of finality of judgments –– Finds basis in public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. (De Ocampo *vs*. RPN-9/Radio Phils. Network, Inc., G.R. No. 192947, Dec. 9, 2015) p. 169

–– Once a judgment becomes final, it may no longer be modified in any respect. (*Id.*)

Summary judgment –– Proper when there is no genuine issue as to any material fact, hence, when the facts as pleaded by the parties are disputed, proceedings for summary judgment cannot take the place of trial. (Rep. of the Phils., represented by the Bureau of Customs *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 209324, Dec. 9, 2015) p. 361

JUDICIAL REVIEW

Application –– Questions relating to the wisdom, morality or practicability of statutes are policy matters that should not be addressed to the judiciary. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

KIDNAPPING

Commission of ––The elements of kidnapping under Art. 267, paragraph 4 of the Revised Penal Code, to wit: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer. (People *vs.* Uganiel Lerio, G.R. No. 209039, Dec. 9, 2015) p. 344

LABOR CONTRACTING OR SUB-CONTRACTING

Independent contractorship –– To determine the existence thereof, it is necessary to establish that the contractor carries a distinct and independent business, and undertakes to perform work on its own account and under its responsibility and pursuant to its own manner and method, without the control of the principal, except as to the result; that the contractor has substantial capital or investment; and, that the agreement between the principal and the contractor assures the contractual employees to all labor and occupational safety and health standards, to right to self-organization, security of tenure and other benefits. (Vicmar Dev't. Corp. and/or Kua vs. Elarcosa, G.R. No. 202215, Dec. 9, 2015) p. 218

LAND REGISTRATION

Indefeasibility of title –– What cannot be collaterally attacked is the certificate of title, and not the title itself. (DAR *vs.* Robles, G.R. No. 190482, Dec. 9, 2015) p. 133

Torrens system –– A certificate of title constitutes evidence of ownership over the subject property and serves as evidence of indefeasible and incontrovertible title to the property in favor of the parties whose names appear therein. (Trinidad II *vs.* Sps. Palad, G.R. No. 203397, Dec. 9, 2015) p. 284

–– Sec. 39 of Act No. 496 and Sec. 44 of P.D. No. 1529 similarly provide for statutory liens which subsist and bind the whole world, even without the benefit of registration under the Torrens System. (DAR *vs.* Robles, G.R. No. 190482, Dec. 9, 2015) p. 133

LAND REGISTRATION ACT (ACT NO. 496)

Encumbrance distinguished from annotation –– An encumbrance is anything that impairs the use or transfer of property; anything which constitutes a burden on the title; a burden or charge upon property; a claim or lien upon property while an annotation is a remark, note, case summary, or commentary on some passage of a book, statutory provision, court decision, of the like, intended to illustrate or explain its meaning. (ASB Realty Corp. *vs.* Ortigas & Co. Ltd. Partnership, G.R. No. 202947, Dec. 9, 2015) p. 262

MALVERSATION

Commission of –– For a successful prosecution thereof, the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence,

permitted another person to take them. (Panganiban *vs.* People, G.R. No. 211543, Dec. 9, 2015) p. 428

—— Good faith is a valid defense in a prosecution for malversation of public funds as it would negate criminal intent on the part of the accused. (*Id.*)

—— May be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property. (*Id.*)

—— To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. (*Id.*)

MINING ACT OF 1995, THE PHILIPPINE (R.A. NO. 7942)

Conversion of mineral agreement —— Publication is not required as such would have already been undertaken during the application of the original mineral agreement. (Narra Nickel Mining and Dev't. Corp. *vs.* Redmont Consolidated Mines Corp., G.R. No. 202877, Dec. 9, 2015) p. 238

Mining dispute —— A dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/ concessionaires. (Narra Nickel Mining and Dev't. Corp. *vs.* Redmont Consolidated Mines Corp., G.R. No. 202877, Dec. 9, 2015) p. 238

Panel of arbitrators –– Has exclusive jurisdiction to hear and decide mining disputes. (Narra Nickel Mining and Dev't. Corp. *vs*. Redmont Consolidated Mines Corp., G.R. No. 202877, Dec. 9, 2015) p. 238

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Appeal ––An appeal from the Labor Arbiter's monetary award requires the posting of a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from and a certificate of non-forum shopping. (Quantum Foods, Inc. *vs.* Esloyo, G.R. No. 213696, Dec. 9, 2015) p. 484

–– Certification requirement is relaxed in the presence of a plausible merit of the case. (*Id.*)

Appeal bond –– A motion to reduce bond may be allowed on a meritorious ground and after a reasonable amount in relation to the monetary award has been posted. (Quantum Foods, Inc. *vs.* Esloyo, G.R. No. 213696, Dec. 9, 2015) p. 484

–– The discretion of the NLRC to grant or deny the motion to reduce bond is upheld in the absence of grave abuse of discretion. (*Id.*)

OBLIGATIONS

Article 1167 of the Civil Code –– Respondent is entitled to the expenses for the repainting job pursuant thereto. (BF Corp. *vs.* Werdenberg International Corp., G.R. No. 174387, Dec. 9, 2015) p. 55

Reciprocal obligations –– In reciprocal obligations, either party may rescind – or more appropriately, resolve – the contract upon the other party's substantial breach of the obligation/s he had assumed thereunder. (Nolasco *vs.* Cuerpo, G.R. No. 210215, Dec. 9, 2015) p. 410

–– Should any of the obligations, whether continuous or activity, be not performed, all other remaining obligations would not ripen into demandable obligations while those

already performed would cease to take effect. (Megaworld Properties and Holdings, Inc. *vs.* Majestic Finance and Investment Co., Inc., G.R. No. 169694, Dec. 9, 2015) p. 34

–– The terms of the Joint Venture Agreement categorized the parties' several obligations into continuous obligations and activity obligations. (*Id.*)

–– Those that arise from the same cause, and in which each party is a debtor and a creditor of the other at the same time, such that the obligations of one are dependent upon the obligations of the other and are to be performed simultaneously, so that the performance by one is conditioned upon the simultaneous fulfillment by the other. (*Id.*)

–– Without such showing that the developer had ceased to perform a continuous obligation to provide security over the joint venture property despite complete fulfillment by the owner of all its accrued obligations, the owner had no right to demand from the developer the round-the-clock security over the 215 hectares of land. (*Id.*)

ORDERS

Status quo ante order –– The issuance of the *status quo ante* order constituted a blatant jurisdictional error. (Megaworld Properties and Holdings, Inc. *vs.* Majestic Finance and Investment Co., Inc., G.R. No. 169694, Dec. 9, 2015) p. 34

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensation and benefits for injury or illness –– For illness to be compensable, a reasonable connection, and not absolute certainty, between the danger of contracting the illness and its aggravation resulting from the working conditions is enough to sustain its compensability. (Phil. Transmarine Carriers, Inc. *vs.* Cristino, G.R. No. 188638, Dec. 9, 2015) p. 108

—— The Court is not precluded from awarding disability benefits on the basis of the medical opinion of the seafarer's physician. (*Id.*)

—— The seafarer enjoys a presumption of compensability for unlisted illness but his claims for compensation and benefits must be substantiated by substantial evidence. (*Id.*)

Permanent disability —— In the absence of any declaration by the employer after the lapse of the 240-day period, there can be a presumption of permanent disability resulting in the entitlement of the seafarer to collect disability benefits. (Phil. Transmarine Carriers, Inc. *vs.* Cristino, G.R. No. 188638, Dec. 9, 2015) p. 108

PLEADINGS

Proof of service ––To comply with the rule on proper proof of service when service is made by registered mail, it is required that the affidavit of service and the registry receipt be attached to the pleading. (Lisondra *vs.* Megacraft International Corp., G.R. No. 204275, Dec. 9, 2015) p. 310

PRESUMPTIONS

Conclusive presumptions — Issuance of certificate of completion and acceptance signifies conclusive approval. (Filinvest Alabang, Inc. *vs.* Century Iron Works, Inc., G.R. No. 213229, Dec. 9, 2015) p. 472

RAPE

Commission of — Not negated by a finding of healed lacerations. (People *vs.* Roaquin *y* Navarro, G.R. No. 215201, Dec. 9, 2015) p. 502

—— Rape is committed – 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat or intimidation; b. When the offended party is deprived of reason or is otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; and d. When

the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (*Id.*)

–– The absence of medical certificate and external injuries do not negate rape. (People *vs.* Lagangga *y* Dumpa, G.R. No. 207633, Dec. 9, 2015) p. 335

Penalty –– The proper penalty for rape qualified by minority and relationship pursuant to R.A. No. 9346 is *reclusion perpetua* without eligibility for parole for each count of rape. (People *vs.* Pateño *y* Dayapdapan, G.R. No. 209040, Dec. 9, 2015) p. 352

Sweetheart theory –– A love affair does not justify rape, for the beloved cannot be sexually violated against her will. (People *vs.* Lagangga *y* Dumpa, G.R. No. 207633, Dec. 9, 2015) p. 335

RULES OF PROCEDURE

Application of –– May be relaxed in order to give full meaning to the constitutional mandate of affording full protection to labor. (Lisondra *vs.* Megacraft International Corp., G.R. No. 204275, Dec. 9, 2015) p. 310

–– Procedural barriers are brushed aside as the petition is hinged on the issue pertaining to the right of suffrage. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

Construction of –– Should be liberally construed as long as their purpose is sufficiently met and there was no violation of due process. (Morillo *vs.* People, G.R. No. 198270, Dec. 9, 2015) p. 192

Importance of –– Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. (Abadilla, Jr. *vs.* Sps. Obrero, G.R. No. 210855, Dec. 9, 2015) p. 419

SALES

Purchaser in good faith —The burden of proving the status of a purchaser in good faith and for value lies upon one who asserts that status. (Yap Bitte *vs.* Sps. Jonas, G.R. No. 212256, Dec. 9, 2015) p. 447

STARE DECISIS

Principle of — Not applicable considering the error in the decision. (Rep. of the Phils., represented by the Bureau of Customs *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 209324, Dec. 9, 2015) p. 361

STATUTES

Strict scrutiny test — The focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same. (Kabataan Party-List *vs.* COMELEC, G.R. No. 221318, Dec. 16, 2015) p. 523

–– Used to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. (*Id.*)

TARIFF AND CUSTOMS CODE

Duties ––Liability of importer for duties constitutes a personal debt due from the importer to the government which can be discharged only by payment in full. (Rep. of the Phils., represented by the Bureau of Customs *vs.* Pilipinas Shell Petroleum Corp., G.R. No. 209324, Dec. 9, 2015) p. 361

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Coverage of –– Transfer of land under P.D. No. 27 is not akin to a conventional sale as such consent is not necessary for its validity. (Heirs of Sps. Marinas *vs.* Frianeza, G.R. No. 179741, Dec. 9, 2015) p. 86

WITNESSES

Credibility of — Guidelines in addressing the issue of credibility of witnesses: first, this Court gives the highest respect to the Regional Trial Court's evaluation of the testimony of the witness, it having the distinct opportunity of observing the witness's demeanor on the stand; second, absent substantial reasons, i.e. significant facts and circumstances, affecting the outcome of the case, that are shown to have been overlooked or disregarded, which would warrant the reversal of the Regional Trial Court's evaluation, the appellate court is generally bound by the lower court's findings; and lastly, the rule is stringently applied when the Court of Appeals affirms the lower court's ruling. (People *vs.* Roaquin *y* Navarro, G.R. No. 215201, Dec. 9, 2015) p. 502

—— In rape cases, the accused may be convicted solely on the basis of the testimony of the victim when it is credible, convincing and consistent with human nature and the normal course of things. (People *vs.* Lagangga *y* Dumpa, G.R. No. 207633, Dec. 9, 2015) p. 335

—— Not diminished by claim of subsequent rape identically done and by failure to immediately report the incident. (People *vs.* Pateño *y* Dayapdapan, G.R. No. 209040, Dec. 9, 2015) p. 352

—— The trial court's assessment thereon is generally accorded great weight on appeal. (People *vs.* Uganiel Lerio, G.R. No. 209039, Dec. 9, 2015) p. 344

(People *vs.* Lagangga *y* Dumpa, G.R. No. 207633, Dec. 9, 2015) p. 335

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