
# PHILIPPINE REPORTS

## VOL. 776

JANUARY 11, 2016

**VOLUME 776**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

JANUARY 11, 2016

SUPREME COURT
MANILA
2017

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2017


EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

## SUPREME COURT OF THE PHILIPPINES

---

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

**FIRST DIVISION**

*Chairperson*

Hon. Maria Lourdes P.A. Sereno

*Members*

Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.
Hon. Bienvenido L. Reyes

*Division Clerk of Court*

Atty. Edgar O. Aricheta

**SECOND DIVISION**

*Chairperson*

Hon. Antonio T. Carpio

*Members*

Hon. Arturo D. Brion
Hon. Mariano C. Del Castillo
Hon. Jose P. Perez
Hon. Estela M. Perlas-Bernabe

*Division Clerk of Court*

Atty. Ma. Lourdes C. Perfecto

**THIRD DIVISION**

*Chairperson*

Hon. Presbitero J. Velasco, Jr.

*Members*

Hon. Diosdado M. Peralta
Hon. Jose C. Mendoza
Hon. Marvic Mario Victor F. Leonen
Hon. Francis H. Jardeleza

*Division Clerk of Court*

Atty. Wilfredo Y. Lapitan

**PHILIPPINE REPORTS**
**CONTENTS**

# PHILIPPINE REPORTS

Page

Page

Page

# REPORT OF CASES

DETERMINED IN THE

## SUPREME COURT OF THE PHILIPPINES

---

### SECOND DIVISION

[A.M. No. RTJ-16-2443. January 11, 2016]
(Formerly OCA IPI No. 10-3521-RTJ)

**ARMANDO M. BALANAY**, *complainant, vs.* **JUDGE JULIANA ADALIM WHITE**, **Regional Trial Court**, **Branch 5**, **Eastern Samar**, *respondent.*

### SYLLABUS

**1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW; JUDGES SHOULD BE HELD ADMINISTRATIVELY LIABLE FOR GROSS IGNORANCE OF THE LAW FOR GRANTING AN *EX PARTE* MOTION FOR BAIL WITHOUT CONDUCTING A HEARING; SUSTAINED.—** It is basic x x x that bail hearing is necessary even if the prosecution does not interpose any objection or leaves the application for bail to the sound discretion of the court. Thus, in *Villanueva v. Judge Buaya,* therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. x x x *A fortiori*, respondent is administratively liable for gross ignorance of the law for granting *ex parte* motions to allow Adama's temporary liberty without setting the same for hearing. If hearing is indispensable in motions for bail, more so in this case where the motions for the temporary liberty of Adamas were filed without offering any bail or without any prayer that

he be released on recognizance. x x x That the prosecution has already filed affidavits of desistance and that, to the opinion of respondent, the accused is not a flight risk, do not justify non- compliance with procedural rules. It is basic that bail cannot be allowed without prior hearing. It is also basic that litigious motions that do not contain a notice of hearing are nothing but a useless piece of paper which the court should not act upon. These rules are so elementary that not to know them constitutes gross ignorance of the law.

2. **ID.; ID.; ID.; WHEN GUILTY OF GROSS MISCONDUCT; A JUDGE'S ACT OF DIRECTING HER SUBORDINATE TO ALTER THE TRANSCRIPT OF STENOGRAPHIC NOTES (TSN) BY INCORPORATING THEREIN STATEMENTS PERTAINING TO SUBSTANTIAL MATTERS THAT WERE NOT ACTUALLY MADE DURING THE HEARING CONSTITUTES GROSS MISCONDUCT WHICH WARRANTS ADMINISTRATIVE SANCTION.—** We also agree with the OCA that there is substantial proof to hold respondent liable for gross misconduct even if the altered TSN was not formally offered in evidence. Respondent admitted in her Comment dated November 24, 2010 and Memorandum dated May 1, 2013 that she instructed Mosende to make some changes in the July 22, 2010 TSN. x x x A TSN "is supposed to be a faithful and exact recording of all matters that transpired during a court proceeding." Respondent's act of directing her subordinate to alter the TSN by incorporating therein statements pertaining to substantial matters that were not actually made during the hearing constitutes gross misconduct which warrants administrative sanction.

3. **ID.; ID.; ID.; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT; IMPOSABLE PENALTY.—** Since respondent had previously been adjudged guilty and penalized for various infractions, with repeated warnings of more severe sanction in case of repetition, we deem it appropriate to increase the recommended penalty of six months suspension to one year without salary and other benefits. **WHEREFORE**, the Court finds Judge Juliana Adalim-White **GUILTY** of **GROSS IGNORANCE OF THE LAW and GROSS MISCONDUCT and SUSPENDS** her from office for one (1) year without salary and other benefits, and **STERNLY**

**WARNS** her that this Court will not hesitate to impose the supreme penalty of dismissal from the service, with all its accessory penalties, in case she commits the same or other similar acts.

**APPEARANCES OF COUNSEL**

*Romulo T. Arellano* for complainant.
*Singco and Cagara Law Offices* for respondent.

**R E S O L U T I O N**

**DEL CASTILLO, *J.*:**

This is an administrative complaint for gross ignorance of the law and serious misconduct filed by complainant Armando M. Balanay against respondent Judge Juliana Adalim-White.

***Factual Antecedents***

On September 20, 2010, complainant filed before the Office of the Court Administrator (OCA) a verified Affidavit-Complaint[1] charging respondent with gross ignorance of the law for allowing Isidoro N. Adamas, Jr. (Adamas) six furloughs despite being charged with murder in Criminal Case No. 10-07, a non–bailable offense. Worse, respondent granted Adama's motions without requiring the prosecution to comment or giving it opportunity to be heard thereon.

Complainant likewise charged respondent with serious misconduct in precipitately dismissing Criminal Case No. 10-07 by declaring that the prosecution had no witnesses to present when the records showed otherwise. According to the complainant, the prosecution witnesses were not able to attend the hearing on July 22, 2010 because they were not duly notified. In fact, he and his son were willing to testify provided they are placed under the witness protection program.

---

[1] *Rollo,* pp. 1-6.

Complainant further claimed that respondent falsified the July 22, 2010 transcript of stenographic notes (TSN) in Criminal Case No. 10-07. He averred that during the hearing held on said date, the prosecution made a reservation to present additional witnesses. Respondent, however, instructed her court stenographer, Prescila V. Mosende (Mosende), to delete from said TSN such reservation and insert therein other statements which were not made during the said hearing. In support of his allegations, complainant submitted a piece of paper[2] containing respondent's handwritten notes that were incorporated in the July 22, 2010 TSN.

Complainant sought the dismissal of respondent from the service with forfeiture of her retirement benefits.

In her Comment,[3] respondent admitted that she instructed Mosende to correct the July 22, 2010 TSN to make it more coherent and accurate. She claimed that the changes were based on her own notes which Mosende adopted after verifying them from the taped recordings of the proceedings. Respondent maintained that the prosecution never made any reservation to present additional witnesses.

Respondent explained that she granted Adamas six furloughs based on the affidavits of desistance subscribed before Prosecutor Raquel G. Kho (Prosecutor Kho) which were already attached to the records of Criminal Case No. 10-07. She also insisted that Adamas is not a flight risk because he voluntarily surrendered himself to the police.

Respondent prayed for the dismissal of the complaint and that complainant be cited for contempt.

On June 15, 2011, this Court referred this administrative matter to the Court of Appeals, Cebu Station for raffle among the Justices therein and for the Justice to whom this case would

---

[2] *Id.* at 35.

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

be assigned to conduct an investigation and submit a report and recommendation.[4]

***Report and recommendation of Justice Maria Elisa Sempio Diy.***

On July 31, 2013, Justice Maria Elisa Sempio Diy (Justice Diy) submitted her Final Report and Recommendations.[5] She opined that respondent is guilty of gross ignorance of the law for allowing Adamas several furloughs based on motions that did not contain a notice of hearing, did not comply with the 3-day notice rule, and were not set for hearing. She, however, recommended that respondent be absolved from the charge of serious misconduct in dismissing the case for want of proof of corruption or willful intent to violate the law. She noted that the propriety of such dismissal was elevated to the Court of Appeals *via* a Petition for *Certiorari*. With regard the alleged falsification of the TSN, Justice Diy recommended its dismissal for failure to formally offer in evidence the subject July 22, 2010 TSN. Nonetheless, she found respondent guilty of simple misconduct considering that the records amply show that respondent attempted to alter the questioned TSN.

Justice Diy recommended that respondent be fined in the amounts of ₱30,000.00 for gross ignorance of the law and ₱10,000.00 for simple misconduct.

On November 11, 2013, we referred this administrative matter to the OCA for evaluation, report and recommendation.

***OCA's Recommendation.***

In its Memorandum[6] dated May 21, 2014, the OCA agreed with Justice Diy that respondent patently and inexcusably transgressed the rules on motions and for which misfeasance she is guilty of gross ignorance of the law. With regard the

---

[4] *Id.* at 77.

[5] *Id.* at 824-865.

[6] *Id.* at 868-878.

charge of serious misconduct, the OCA found substantial evidence to support the same. For the OCA -

> the copy of the altered TSN and the scratch paper containing the statements to be inserted in the TSN that were handwritten by respondent Judge herself attached to the complaint-affidavit, the testimony of Mosende that it was [the] respondent Judge who ordered the insertion of the statements, the admission of [the] respondent Judge x x x that she ordered the insertion of the said statements, and the transcription of the stenographers of the Court of Appeals of the hearing covered by the altered TSN[7]

sufficiently established that respondent caused the unauthorized alteration of the TSN which amounts to serious misconduct.

Moreover, the OCA noted that this is not the first time that respondent has been found administratively liable, *viz.*:

> In A.M. No. RTJ-08-2147 *[Formerly A.M. OCA IPI No. 05-2365-RTJ] (Mayor Diego T. Lim vs. Judge Juliana A. White, Regional Trial Court, Br. 5, Oras, Eastern Samar)*, respondent judge was charged with impropriety and found guilty of conduct unbecoming under Section 1, Rule 140 for which she was reprimanded and warned. In A.M. No. RTJ-14-2474 *[Formerly OCA IPI No. 11-3777-RTJ] (Vilma Sulse, et al. vs. Judge Juliana Adalim White, Regional Trial Court, Br. 5, Oras, Eastern Samar)*, respondent Judge was again found guilty of impropriety and fined ten thousand pesos (₱10,000.00) and sternly warned.[8]

The OCA, thus, recommended that respondent be found guilty of gross ignorance of the law and gross misconduct, and that she be suspended from office without salary and other benefits for six months.[9]

**Issue**

Is respondent guilty of gross ignorance of the law and serious misconduct?

---

[7] *Id.* at 876.

[8] *Id.* at 878.

[9] *Id.*

## Our Ruling

We adopt the findings and recommendations of the OCA, except as to penalty.

***Respondent is guilty of gross ignorance of the law.***

Respondent admits allowing Adamas six consecutive furloughs to attend regular sessions of the *Sangguniang Bayan* of the Municipality of Oras, Eastern Samar based on very urgent motions that did not contain notice of hearing and were not heard in open court. Thus:

> ATTY. ARELLANO:
> Now, you said that furlough was granted by [you] on June 18, 2010, right?
>
> JUDGE WHITE:
> Yes, sir.
>
> ATTY. ARELLANO:
> Did you hear that motion first before you granted it?
>
> JUDGE WHITE:
> No, sir.
>
> Q :Why not?
> A :I did not hear it anymore because there is already an affidavit of desistance coming from the Office of the Provincial Prosecutor and so I feel that the evidence is not strong anymore and I examined the circumstances of the accused, Mr. Isidoro Adamas. The offense was committed on May 28, he surrendered to the authorities on June 1 and the information was filed. To me he was not a flight risk.[10]
>
> ATTY. ARELLANO:
> When you read the first motion asking for a furlough on June 18, 2010, you will agree with me that it no longer occurred to your mind to ask the prosecution, specifically Public Prosecutor Raquel G. Kho, to comment or opposed tet *[sic]* said motion. You did not ask Public Prosecutor Kho to comment, is that right?

---

[10] Final Report and Recommendations, pp. 15-16; *rollo*, pp. 838-839.

A :I did not ask him to comment, but we met [at] the lobby and we talked about [those] furloughs and the affidavit of desistance.

Q :Madame Witness, you are a Regional Trial Court Judge x x x Are you saying that a casual meeting outside the courtroom at the lobby will suffice? Is that what you mean?

A :No, but the affidavit of desistance was subscribed by Prosecutor Kho.

Q :I am just asking. Is that what you mean that it is sufficient already? Yes or no?

A :Yes, I supposed so because I did that.

x x x x x x x x x

Q :So that is the practice of others in your Court to notify the other parties of the pending motion even outside [your] courtroom even if you met the other party casually in the lobby of the court? *(sic)*

A :Usually, we notify them formally but it doesn't prevent me especially lawyers, fiscals to talk with them.

x x x x x x x x x

ATTY. ARELLANO:

Now, Madame Witness, being a judge, are you aware of the provisions of the Rules of Court that a notice which does not contain proof of service to other parties and in case if it is litigious does not contain (sic) notice of hearing is a mere scrap of paper?

A :That is correct[,] sir.

x x x x x x x x x

Q :x x x Would that be enough for you to disregard the Rules of Court that a motion which does not contain service to the other party or a notice of hearing specifically in this particular criminal case wherein the accused was charge (sic) of (sic) a capital offense of murder. Was the existence of the affidavit of desistance enough for you to disregard the application of the Rules of Court?

A :No, they were only asking for a furlough and I felt that Isidoro Adamas must attend that session because he is a public official.

Q :I understand that he needed to attend. Now when you felt that he needed to attend the session, was that also enough for you to disregard the rules that a motion must contain proof of service to the other party and a notice of hearing? Was that enough for you to disregard those rules?

A :Yes, I considered the fact that Mr. Isidoro Adamas is a public official. So he has to work.[11]

x x x x x x x x x

Q :Madam Witness, you will agree with me that this motion was filed on June 18, 2010 at 8:50 a.m., as shown by the rubber stamp marking.

A :Yes, sir.

Q :And considering that the movant accused wanted to attend the session of the Sangguniang Bayan of Oras, Eastern Samar on June 18, 2010 also on that very same day at 9 o'clock in the morning you immediately granted this motion in your Order dated June 18, 2010 given in chambers before 9 a.m.?

A :That is correct. There is no time indicated here. So, I don't know. I cannot recall now, but that is the Order.[12]

It is basic, however, that bail hearing is necessary even if the prosecution does not interpose any objection or leaves the application for bail to the sound discretion of the court.[13] Thus, in *Villanueva v. Judge Buaya,*[14] therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. Stressing the necessity of bail hearing, this Court pronounced that:

The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion

---

[11] *Id.* at 18-22; *id*. at 841-845.

[12] *Id.* at 26; *id*. at 849.

[13] *Basco v. Judge Rapatalo*, 336 Phil. 214, 220-221 (1997).

[14] 650 Phil. 9 (2010).

which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.[15]

*A fortiori*, respondent is administratively liable for gross ignorance of the law for granting *ex parte* motions to allow Adama's temporary liberty without setting the same for hearing. If hearing is indispensable in motions for bail, more so in this case where the motions for the temporary liberty of Adamas were filed without offering any bail or without any prayer that he be released on recognizance. Besides, the reasons relied upon in said motions – to allow Adamas to attend the *Sangguniang Bayan* sessions – had already been rebuked by this Court. In *People v. Hon. Maceda*[16] reiterated in *Trillanes IV v. Judge Pimentel Sr.,*[17] this Court held that "all prisoners whether under preventive detention or serving final sentence cannot practice their profession nor engage in any business or occupation or hold office, elective or appointive, while in detention."

That the prosecution has already filed affidavits of desistance[18] and that, to the opinion of respondent, the accused is not a flight risk, do not justify non-compliance with procedural rules.

---

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

[16] 380 Phil. 1, 5 (2000).

[17] 578 Phil. 1002, 1015 (2008).

[18] *Rollo,* pp. 380-383.

It is basic that bail cannot be allowed without prior hearing. It is also basic that litigious motions that do not contain a notice of hearing are nothing but a useless piece of paper which the court should not act upon. These rules are so elementary that not to know them constitutes gross ignorance of the law. In *Atty. Adalim-White v. Judge Bugtas*[19] (where incidentally herein respondent was the complainant), we elucidated on gross ignorance of the law as follows:

> We have held time and again that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. It is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the rule of law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law. x x x

***Respondent is guilty of gross misconduct.***

We also agree with the OCA that there is substantial proof to hold respondent liable for gross misconduct even if the altered TSN was not formally offered in evidence. Respondent admitted in her Comment[20] dated November 24, 2010 and Memorandum[21] dated May 1, 2013 that she instructed Mosende to make some changes in the July 22, 2010 TSN, *viz.*:

> When the draft [TSN] of the July 22, 2010 proceedings was submitted for correction to respondent by the court stenographer, Ms. Prescila Mosende, the missing or omitted statements were brought to her attention. To rectify the errors in the draft, respondent showed her notes to Ms. Mosende and later transcribed it for the latter on another sheet of paper. Ms. Mosende verified the corrections by referring it to her tape recordings.[22]

---

[19] 511 Phil. 615, 627 (2005).

[20] *Rollo,* pp. 43-48.

[21] *Id.* at 509-520.

[22] *Id.* at 44.

The sheet of paper[23] mentioned on respondent's Comment and Memorandum, on the other hand, contains her handwritten notes that read as follows:

| | | |
|---|---|---|
| Court | - | What about this secret witness [whose identity] you do not want to make known x x x. Has an application for witness protection program been applied with the DOJ? |
| Fiscal Kho | - | I believe not yet your honor. I myself [do] not know his identity. Last night your honor Fiscal Umil informed me of his plan that a certain witness will be enrolled in the Witness Protection Program. |
| Court | - | Why is there no formal notice to the Court? |
| Fiscal Kho | - | I just learned this last night during the wake. |

Upon the instructions of respondent, these notes were, in turn, incorporated in the July 22, 2010 TSN and certified as true and correct by Mosende.

To determine the accuracy and correctness of said TSN, the investigating justice directed two stenographic reporters[24] of Court of Appeals, Cebu Station to make their own transcription of the proceedings in Criminal Case No. 10-07 held on July 22, 2010 based on audio records. From their transcriptions, the above-quoted exchanges between respondent and Prosecutor Kho do not exist. Indubitably, respondent tried to make it appear that she and Prosecutor Kho made the above-quoted statements during the proceedings held on July 22, 2010 when in truth no such statements were actually made.

A TSN "is supposed to be a faithful and exact recording of all matters that transpired during a court proceeding."[25] Respondent's act of directing her subordinate to alter the TSN by incorporating therein statements pertaining to substantial

---

[23] *Id.* at 35.

[24] Rossie Alesna-Maceda and Cresilda Dumaran.

[25] *Judge Almario v. Atty. Resus,* 376 Phil. 857, 867 (1999).

matters that were not actually made during the hearing constitutes gross misconduct which warrants administrative sanction.

***Proper Penalty***

The OCA recommended the penalty of suspension of six months without salary and other benefits against respondent. In *Mayor Lim v. Judge White*,[26] however, we reprimanded respondent for unbecoming conduct and warned her that the commission of similar acts of impropriety will be dealt with more severely. Then in *Sulse v. Judge White*,[27] we again found respondent guilty of impropriety and conduct unbecoming of a judge and imposed a penalty of fine of ₱10,000.00 with stern warning that a repetition of the same offense shall be dealt with more severely. Since respondent had previously been adjudged guilty and penalized for various infractions, with repeated warnings of more severe sanction in case of repetition, we deem it appropriate to increase the recommended penalty of six months suspension to one year without salary and other benefits.

**WHEREFORE**, the Court finds Judge Juliana Adalim-White **GUILTY** of **GROSS IGNORANCE OF THE LAW and GROSS MISCONDUCT and SUSPENDS** her from office for one (1) year without salary and other benefits, and **STERNLY WARNS** her that this Court will not hesitate to impose the supreme penalty of dismissal from the service, with all its accessory penalties, in case she commits the same or other similar acts.

**SO ORDERED**.

*Carpio (Chairperson), Brion, Mendoza,* and *Leonen, JJ.,* concur.

---

[26] A.M. No. RTJ-08-2147 [Formerly A.M. OCA IPI No. 05-2365-RTJ], November 10, 2008. (Minute Resolution)

[27] A.M. No. RTJ-14-2374 [Formerly OCA IPI No. 11-3777-RTJ], February 3, 2014. (Minute Resolution)

**FIRST DIVISION**

[G.R. No. 156635. January 11, 2016]

**THE HONGKONG & SHANGHAI BANKING CORPORATION EMPLOYEES UNION, MA. DALISAY P. DELA CHICA, MARVILON B. MILITANTE, DAVID Z. ATANACIO, JR., CARMINA C. RIVERA, MARIO T. FERMIN(†), ISABELO E. MOLO, RUSSEL M. PALMA, IMELDA G. HERNANDEZ, VICENTE M. LLACUNA, JOSEFINA A. ORTIGUERRO, MA. ASUNCION G. KIMSENG, MIGUEL R. SISON, RAUL P. GERONIMO, MARILOU E. CADENA, ANA N. TAMONTE, AVELINO Q. RELUCIO, JORALYN R. GONGORA, CORAZON E. ALBOS, ANABELLA J. GONZALES, MA. CORAZON Q. BALTAZAR, MARIA LUZ I. JIMENEZ, ELVIRA A. ORLINA, SAMUEL B. ELLARMA, ROSARIO A. FLORES, EDITHA L. BROQUEZA, REBECCA T. FAJARDO, MA. VICTORIA C. LUNA, MA. THERESA G. GALANG, BENIGNO V. AMION, GERARDO J. DE LEON, ROWENA T. OCAMPO, MALOU P. DIZON, RUBEN DE C. ATIENZA, MELO E. GABA, HERNAN B. CAMPOSANTO, NELIA D. M. DERIADA, LOLITO L. HILIS, GRACE C. MABUNAY, FE ESPERANZA C. GERONG, MANUEL E. HERRERA, JOSELITO J. GONZAGA, ULDARICO D. PEDIDA, ROSALINA JULIET B. LOQUELLANO, MARCIAL F. GONZAGA, MERCEDES R. PAULE, JOSE TEODORO A. MOTUS, BLANCHE D. MOTUS, DAISY M. FAGUTAO, ANTONIO A. DEL ROSARIO, EMMANUEL JUSTIN S. GREY, FRANCISCA DEL MUNDO, JULIETA A. CRUZ, RODRIGO J. DURANO, CATALINA R. YEE, MENANDRO CALIGAGAN, MAIDA M. SACRO MILITANTE, LEONILA M. PEREZ, and EMMA MATEO,** *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and THE HONGKONG & SHANGHAI BANKING CORPORATION, LTD.,** *respondents.*

## SYLLABUS

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; STRIKES; PROCEDURAL REQUIREMENTS FOR A VALID STRIKE, EXPLAINED; VIOLATION IN CASE AT BAR.—**The right to strike is a constitutional and legal right of all workers because the strike, which seeks to advance their right to improve the terms and conditions of their employment, is recognized as an effective weapon of labor in their struggle for a decent existence. However, the right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employers. Thus, the law prescribe limits on the exercise of the right to strike. Article 263 of the *Labor Code* specifies the limitations on the exercise of the right to strike, *viz.*: x x x The procedural requirements for a valid strike are, therefore, the following, to wit: (1) a notice of strike filed with the DOLE at least 30 days before the intended date thereof, or 15 days in case of ULP; (2) a strike vote approved by the majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (3) a notice of the results of the voting at least seven days before the intended strike given to the DOLE. These requirements are mandatory, such that non-compliance therewith by the union will render the strike illegal. According to the CA, the petitioners neither filed the notice of strike with the DOLE, nor observed the cooling-off period, nor submitted the result of the strike vote. Moreover, although the strike vote was conducted, the same was done by open, not secret, balloting, in blatant violation of Article 263 and Section 7, Rule XIII of the *Omnibus Rules Implementing the Labor Code*. It is not amiss to observe that the evident intention of the requirements for the strike-notice and the strike-vote report is to reasonably regulate the right to strike for the attainment of the legitimate policy objectives embodied in the law. As such, the petitioners committed a prohibited activity under Article 264(a) of the *Labor Code,* and rendered their strike illegal. x x x Accordingly, the petitioners' plea for the revisit of the doctrine to the effect that the compliance with Article 263 was mandatory was entirely unwarranted. It is significant to remind that the doctrine has not been established by judicial declaration but by congressional enactment. *Verbal legis non est recedendum*. The words of a statute, when they are clear, plain and free from ambiguity,

must be given their literal meaning and must be applied without interpretation. Had the legislators' intention been to relax this restriction on the right of labor to engage in concerted activities, they would have stated so plainly and unequivocally.

**2. ID.; ID.; ID.; THE EMPLOYMENT OF PROHIBITED MEANS IN CARRYING OUT CONCERTED ACTIONS INJURIOUS TO THE RIGHT TO PROPERTY OF OTHERS COULD ONLY RENDER THE STRIKE ILLEGAL; APPLICATION IN CASE AT BAR.—** For sure, the petitioners could not justify their illegal strike by invoking the constitutional right of labor to concerted actions. Although the Constitution recognized and promoted their right to strike, they should still exercise the right *within the bounds of law*. Those bounds had been well-defined and well-known. Specifically, Article 264(e) of the *Labor Code* expressly enjoined the striking workers engaged in picketing from committing any act of violence, coercion or intimidation, or from obstructing the free ingress into or egress from the employer's premises for lawful purposes, or from obstructing public thoroughfares. The employment of prohibited means in carrying out concerted actions injurious to the right to property of others could only render their strike illegal. Moreover, their strike was rendered unlawful because their picketing which constituted an obstruction to the free use of the employer's property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance, should be regulated. In fine, the strike, even if justified as to its ends, could become illegal because of the means employed, especially when the means came within the prohibitions under Article 264(e) of the *Labor Code*.

**3. ID.; ID.; ID.; DISREGARDING THE PROCEDURAL REQUIREMENTS FOR CONDUCTING A VALID STRIKE NEGATED THE CLAIM OF GOOD FAITH; EXPLAINED.—** The petitioners' disregard of the procedural requirements for conducting a valid strike negated their claim of good faith. For their claim to be upheld, it was not enough for them to believe that their employer was guilty of ULP, for they must also sufficiently show that the strike was undertaken with a modicum of obeisance to the restrictions on their exercise of the right to strike prior to and during its execution as prescribed by the law. They did not establish their compliance with the

requirements specifically for the holding of the strike vote and the giving of the strike notice. The petitioners should entirely bear the consequence of their non-compliance with the legal requirements.

**4. ID.; ID.; ID.; AS A GENERAL RULE, THE MERE FINDING OF THE ILLEGALITY OF THE STRIKE DOES NOT JUSTIFY THE WHOLESALE TERMINATION OF THE STRIKERS FROM THEIR EMPLOYMENT; RATIONALE.—** As a general rule, the mere finding of the illegality of the strikes does not justify the wholesale termination of the strikers from their employment. To avoid rendering the recognition of the workers' right to strike illusory, the responsibility for the illegal strike is individual instead of collective. The last paragraph of Article 264(a) of the *Labor Code* defines the norm for terminating the workers participating in an illegal strike. x x x Conformably with Article 264, we need to distinguish between the officers and the members of the union who participate in an illegal strike. The officers may be *deemed terminated* from their employment upon a finding of their *knowing participation in the illegal strike*, but the members of the union shall suffer the same fate only if they are shown to have *knowingly participated in the commission of illegal acts during the strike*. Article 264 expressly requires that the officer must have "knowingly participated" in the illegal strike. x x x Unlike the Union's officers, the ordinary striking members could not be terminated for merely taking part in the illegal strike. Regardless of whether the strike was illegal or not, the dismissal of the members could be upheld only upon proof that they had committed illegal acts during the strike. They must be specifically identified because the liability for the prohibited acts was determined on an individual basis. For that purpose, substantial evidence available under the attendant circumstances justifying the penalty of dismissal sufficed.

**5. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; INSUBORDINATION, AS A GROUND; ELEMENTS.—** For insubordination to exist, the order must be: (1) reasonable and lawful; (2) sufficiently known to the employee; and (3) in connection to his duties.

**6. ID.; ID.; ID.; ABANDONMENT; ELEMENTS; EXPLAINED.—** As to abandonment, two requirements need to be established, namely: (1) the failure to report for work or absence must be without valid or justifiable reason; and (2) there must be a clear

intention to sever the employer-employee relationship. The second element is the more decisive factor and must be manifested by overt acts. In that regard, the employer carries the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. However, the petitioners unquestionably had no intention to sever the employer-employee relationship because they would not have gone to the trouble of joining the strike had their purpose been to abandon their employment.

**7. ID.; ID.; ID.; THE LABOR CODE MANDATES COMPLIANCE WITH THE TWIN NOTICE REQUIREMENT IN TERMINATING AN EMPLOYEE; SUSTAINED.—** While Article 264 authorizes the termination of the union officers and employees, it does not remove from the employees their right to due process. Regardless of their actions during the strike, the employees remain entitled to an opportunity to explain their conduct and why they should not be penalized. In *Suico v. National Labor Relations Commission*, we have reiterated the need for the employers to comply with the twin-notice requirement despite the cause for the termination arising from the commission of the acts prohibited by Article 264. x x x Consequently, failure of the employer to accord due process to its employees prior to their termination results in illegal dismissal. x x x Article 277(b) of the *Labor Code* mandates compliance with the twin-notice requirement in terminating an employee. HSBC should be held liable for two types of illegal dismissal – the first type was made without both substantive and procedural dues process, while the other was based on a valid cause but lacked compliance with procedural due process. To the first type belonged the dismissal of Fermin, Fagutao and the 18 employees initially identified by the NLRC, while the second type included the rest of the petitioners. The rule for employees unlawfully terminated without substantive and procedural due process is to entitle them to the reliefs provided under Article 279 of the *Labor Code*, that is, reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was withheld up to the time of actual reinstatement. However, the award of backwages is subject to the settled policy that when employees voluntarily go on strike, no backwages during the strike shall be awarded. In *Agabon*,

we said that a dismissal based either on a just or authorized cause but effected without due process should be upheld. The employer should be nonetheless liable for non-compliance with procedural due process by paying indemnity in the form of nominal damages amounting to ₱30,000.00.

**APPEARANCES OF COUNSEL**

*Tañada Vivo & Tan* for petitioners.
*Sanidad Viterbo Enriquez & Tan Law Firm* for respondents.

**D E C I S I O N**

**BERSAMIN, *J.*:**

A strike staged without compliance with the requirements of Article 263[1] of the *Labor Code* is illegal, and may cause the termination of the employment of the participating union officers and members. However, the liability for the illegal strike is individual, not collective. To warrant the termination of an officer of the labor organization on that basis, the employer must show that the officer knowingly participated in the illegal strike. An ordinary striking employee cannot be terminated based solely on his participation in the illegal strike, for the employer must further show that the employee committed illegal acts during the strike.

**The Case**

Under appeal is the decision promulgated on January 31, 2002 by the Court of Appeals (CA) in CA-G.R. SP No. 56797 entitled *The Hongkong & Shanghai Banking Corporation Employees Union, et al. v. National Labor Relations Commission and The Hongkong & Shanghai Banking Corporation, Ltd.,*[2] which disposed as follows:

---

[1] Now Article 278 pursuant to DOLE Department Advisory No. 01, Series of 2015.

[2] *Rollo*, pp. 77-89; penned by Associate Justice Elvi John S. Asuncion, concurred by Associate Justice Rebecca De Guia-Salvador (retired) and Associate Justice Romeo A. Brawner (later Presiding Justice/retired/deceased).

**WHEREFORE**, the instant petition is **DISMISSED** and the questioned decision of the National Labor Relations Commission is **AFFIRMED** with **MODIFICATION**.

Private respondent Hongkong & Shanghai Banking Corporation is ordered to pay each of the following: Isabelo Molo, Elvira Orlina, Samuel Ellarma, Rosario Flores, Rebecca Fajardo, Ma. Victoria Luna, Malou Dizon, Ruben Atienza, Melo Gaba, Nelia Deriada, Fe Esperanza Gerong, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Binche Motus, Antonio del Rosario, Francisca del Mundo and Maida Militante:

(a) full backwages from the time of their dismissal in 1993 up to the time this decision becomes final; and

(b) separation pay equivalent to one-half (1/2) month salary for every year of service up to 1993.

SO ORDERED.[3]

Also under review is the resolution promulgated on December 9, 2002 whereby the CA denied the petitioners' motion for reconsideration.[4]

## Antecedents

In the period material to this case, petitioner Hongkong & Shanghai Banking Corporation Employees Union (Union) was the duly recognized collective bargaining agent of the rank-and-file employees of respondent Hongkong & Shanghai Banking Corporation (HSBC). A collective bargaining agreement (CBA) governed the relations between the Union and its members, on one hand, and HSBC effective April 1, 1990 until March 31, 1993 for the non-representational (economic) aspect, and effective April 1, 1990 until March 31, 1995 for the representational aspect.[5] The CBA included a salary structure of the employees comprising of grade levels, entry level pay rates and the individual pays depending on the length of service.[6]

---

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

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

[5] *Id*. at 1178-1218.

[6] *Id*. at 138-143.

On January 18, 1993, HSBC announced its implementation of a job evaluation program (JEP) retroactive to January 1, 1993. The JEP consisted of a job designation per grade level with the accompanying salary scale providing for the minimum and maximum pay the employee could receive per salary level.[7] By letter dated January 20, 1993,[8] the Union demanded the suspension of the JEP, which it labeled as an unfair labor practice (ULP). In another letter dated January 22, 1993, the Union informed HSBC that it would exercise its right to concerted action. On the same day of January 22, 1993, the Union members started picketing during breaktime while wearing black hats and black bands on their arms and other appendages.[9] In its letter dated January 25, 1993, HSBC responded by insisting that the JEP was an express recognition of its obligation under the CBA.[10] The Union's concerted activities persisted for 11 months,[11] notwithstanding that both sides had meanwhile started the re-negotiation of the economic provisions of their CBA[12] on March 5, 1993.[13] The continued concerted actions impelled HSBC to suspend the negotiations on March 19, 1993,[14] and to issue memoranda, warnings and reprimands to remind the members of the Union to comply with HSBC's Code of Conduct.

Due to the sustained concerted actions, HSBC filed a complaint for ULP in the Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC-NCR Case No. 00-04-02481-93. The Labor Arbiter's decision was appealed to the NLRC whose disposition to remand the case to the Labor Arbiter for further proceedings was in turn assailed. Ultimately, in G.R. No. 125038 entitled *The Hongkong & Shanghai Banking*

---

[7] *Id*. at 79.

[8] *Id*. at 150.

[9] *Id*. at 18.

[10] *Id*. at 1117.

[11] *Supra* note 8.

[12] *Supra* note 9.

[13] *Supra* note 8.

[14] *Rollo*, p. 443.

*Corporation Employees Union v. National Labor Relations Commission and The Hongkong & Shanghai Banking Corporation, Ltd.,* the Court affirmed the disposition of the NLRC, and directed the remand of the case to the Labor Arbiter for further proceedings.[15]

The Union conducted a strike vote on December 19, 1993 after HSBC accorded regular status to Patrick King, the first person hired under the JEP. The majority of the members of the Union voted in favor of a strike.[16] The following day, the Union served its letter on HSBC in protest of the continued implementation of the JEP, and insisted that HSBC's modification of the salary structure under the JEP constituted ULP.

On December 22, 1993, at around 12:30 p.m., the Union's officers and members walked out and gathered outside the premises of HSBC's offices on Ayala Avenue, Makati and Ortigas Center, Pasig.[17] According to HSBC, the Union members blocked the entry and exit points of the bank premises, preventing the bank officers, including the chief executive officer, from entering and/or leaving the premises.[18] This prompted HSBC to resort to a petition for *habeas corpus* on behalf of its officials and employees thus prevented from leaving the premises, whom it airlifted on December 24, 1993 to enable them to leave the bank premises.[19]

On December 24, 1993, HSBC filed its complaint to declare the strike illegal.[20] The HSBC also petitioned for injunction (with prayer for temporary restraining order (TRO)/writ of prohibitory injunction) in the NLRC, which issued the TRO on January 6, 1994, and the writ of preliminary injunction on

---

[15] G.R. No. 125038, November 6, 1997, 281 SCRA 509.

[16] *Rollo*, p. 20.

[17] *Id.* at 444.

[18] *Id.* at 445.

[19] *Id.* at 446.

[20] *Id.* at 20.

January 31,1994.[21] On November 22, 2001, the Court upheld the actions taken in that case in *The Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission and The Hongkong and Shanghai Banking Corporation Limited.*[22]

In the meantime, HSBC issued return-to-work notices to the striking employees on December 22, 1993. Only 25 employees complied and returned to work. Due to the continuing concerted actions, HSBC terminated the individual petitioners on December 27, 1993.[23] The latter, undeterred, and angered by their separation from work, continued their concerted activities.

**Ruling of the Labor Arbiter**

On August 2, 1998, Labor Arbiter (LA) Felipe P. Pati declared the strike illegal for failure of the Union to file the notice of strike with the Department of Labor and Employment (DOLE); to observe the cooling-off period; and to submit the results of the strike vote to the National Conciliation and Mediation Board (NCMB) pursuant to Article 263 of the *Labor Code.* He concluded that because of the illegality of the strike the Union members and officers were deemed to have lost their employment status. He disposed thusly:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. The 22 December 1993 strike conducted by the union is hereby declared illegal;

2. The following Union officers and members who participated in the 22 December 1993 strike are hereby deemed to have lost their employment status as of that date, namely: Dalisay Dela Chica, Isabelo Molo, Danilo Alonso, Alvar Rosales, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina Ortiguero, Agustin Iligan, Ma. Asuncion Kimseng, Miguel

---

[21] *Id.* at 447.

[22] G.R. No. 113541, November 20, 2001, 370 SCRA 193.

[23] *Rollo*, p. 446.

Sison, Raul Geronimo, Marilou Cadena, Ana Tamonte, Yolanda Enciso, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gozales, Ma. Corazon Baltazar, Maria Luz Jimenez, Concordio Madayag, Elvira Orlina, Ma. Lourdes Austria, Josephine Landas, Samuel Ellarma, Rosario Flores, Editha Broqueza, Marina Salvacion, Ma. Cecilia Ocampo, Rebecca Fajardo, Ma. Victoria Luna, Ma. Theresa Ofelia Galang, Benigno Amion, Mercedes Castro, Gerardo de Leon, Rowena Ocampo, Malou Dizon, Juliet Dacumos, Blandina dela Pena, Ruben Atienza, Ma. Fe Temporal, Mello Gaba, Herman Camposanto, Nelia Deriada, Lolito Hilis, Ma. Dulce Abellar, Grace Mabunay, Fe Esperanza Gerong, Romeo Tumlos, Sonia Argos, Manuel Herrera, Joselito Gonzaga, Uldarico Pedida, Cynthia Calangi, Rosalina Loquellano, Marcial Gonzaga, Mercedes Paule, Jess Nicolas, Teodoro Motus, Blanche Motus, Daisy Martinez Fagutao, Antonio del Rosario, Emmanuel Justin Grey, Francisca del Mundo, Juliet Cruz, Rodrigo Durano, Carmina Rivera, David Atanacio, Jr., Ofelia Rabuco, Alfred Tan Jr., Catalina Yee, Menandro Caligaga, Melorio Maida Militante, Antonio Marilon, and Leonila Peres, Emma Mateo, Felipe Vital, Jr., Marlo Fermin, and Virgilio Reli;

3. The Union, its officers and members are hereby held jointly and severally liable to pay the Bank the amount of ₱45,000.00 as actual damages.

All the other claims for moral and exemplary damages are denied for lack of merit.

SO ORDERED.[24]

## Decision of the NLRC

On appeal, the NLRC modified the ruling of LA Pati, and pronounced the dismissal of the 18 Union members unlawful for failure of HSBC to accord procedural due process to them, *viz.:*

x x x [W]e note, however, that as per the submission of the parties, not all the respondents (members) have been identified by complainant as having violated the law on free ingress and egress (i.e., Article

[24] *Id.* at 1139-1141.

264[e]). A meticulous review of the testimonies given during trial and a comparison of the same show that 25 respondents were not named by complainant's witnesses.

Of the 25, 6 of them (Rabuco, Salvacion, Castro, Dacumos, Calangi and Nicolas) have already settled with the complainant during the pendency of the appeal. Of the remaining 19, one respondent is a union officer (Rivera) while the remaining 18 respondents (Molo, Orlina, Ellarma, Flores, Fajardo, Luna, Dizon, Atienza, Gaba, Deriada, Gerong, Herrera, Loquellano, Paule, Motus, Del Rosario, Mundo and Militante) are neither officers nor members who have been pinpointed as having committed illegal act[s]. We, therefore, disagree with the Labor Arbiter's generalization that these 18 respondents have similarly lost their employment status simply because they participated in or acquiesced to the holding of the strike.

x x x x x x x x x

Only insofar as the xxx 18 respondents are concerned, We rule that complainant did fail to give them sufficient opportunity to present their side and adequate opportunity to answer the charges against them. More was expected from complainant and its observance of due process may not be dispensed with no matter how brazen and blatant the violation of its rules and regulations may have perceived. The twin requirement of notice and hearing in termination cases are as much indispensable and mandatory as the procedural requirements enumerated in Article 262 of the Labor Code. In this case, We cannot construe complainant's notice to return-to-work as substantial compliance with due process requirement.

Contrary however to respondents' insistence that complainant failed to observe due process in the case of the 18 respondents does not mean that they are automatically entitled to backwages or reinstatement. Consistent with decided cases, these respondents are entitled only to indemnity for complainant's omission, specifically to the amount of ₱5,000.00 each. x x x

As a final word, and only as regard these 18 respondents, We take note of the fact that they have remained silent spectators, if not mere by-standers, in the illegal strike and illegal acts committed by the other individual respondents, and since the grounds for which they have been terminated do not involve moral turpitude, the consequences for their acts must nevertheless be tempered with some sense of compassion. Consistent with prevailing jurisprudence and

in the interest of social justice, We find the award of separation pay to each of the 18 respondents equivalent to one-half (1/2) month salary for every year of service as equitable and proper.

x x x x x x x x x

WHEREFORE, the decision dated 26 August 1998 is hereby AFFIRMED with the modification that complainant is ordered to pay (a) ₱5,000.00 and (b) one-half (1/2) month salary for every year of service up to December 1993 to each of the following respondents: Isabelo Molo, Elvira Orlina, Samuel Ellarma, Rosario Flores, Rebecca Fajardo, Ma. Victoria Luna, Malou Dizon, Ruben Atienza, Melo Gaba, Nelia Deriada, Fe Esperanza Gerong, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Binche Motus, Antonio del Rosario, Francisca del Mundo and Maida Militante.

SO ORDERED.[25]

The petitioners filed their motion for reconsideration, but the NLRC denied their motion.[26]

### Judgment of the CA

On *certiorari,* the CA, through the assailed judgment promulgated on January 31, 2002,[27] deleted the award of indemnity, but ordered HSBC to pay backwages to the 18 employees in accordance with *Serrano v. National Labor Relations Commission.*[28] to wit:

In *Ruben Serrano v. NLRC and Isetann Department Store* xxx, the Court ruled that an employee who is dismissed, whether or not for just or authorized cause but without prior notice of his termination, is entitled to full backwages from the time he was terminated until the decision in his case becomes final, when the dismissal was for cause; and in case the dismissal was without just or valid cause, the backwages shall be computed from the time of his dismissal until his actual reinstatement. In the case at bar, where the requirement

---

[25] *Id.* at 1154-1158.

[26] Records, Vol. VIII, pp. 640-642.

[27] *Supra* note 1.

[28] G.R. No. 117040, January 27, 2000, 323 SCRA 445.

of notice and hearing was not complied with, the aforecited doctrine laid down in the *Serrano* case applies.[29]

On motion for reconsideration, the CA reiterated its judgment, and denied HSBC's motion to delete the award of backwages.[30]

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

Pending the appeal, petitioners Elvira A. Orlina, Rosario A. Flores, Ma. Victoria C. Luna, Malou Dizon, Fe Esperanza Gerong, Francisca del Mundo, and Ruben Atienza separately presented motions to withdraw as petitioners herein by virtue of their having individually executed compromise agreements/ quitclaims with HSBC.[31] The Court granted all the motions to withdraw;[32] hence, this adjudication relates only to the remaining petitioners.

## Issues

The remaining petitioners raise the following grounds in support of their appeal, namely:

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN HOLDING THAT ALL THE PETITIONERS WERE VALIDLY DISMISSED

*A*

The Court of Appeals cannot selectively apply the right to due process in determining the validity of the dismissal of the employee

*B*

The refusal to lift the strike upon orders of the HSBC is not just cause for the dismissal of the employees

---

[29] *Rollo*, p. 88.

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

[31] *Id.* at 270, 285-288, 1344-1362.

[32] *Id.* at 272, 305 and 1363.

*C*

The HSBC is liable for damages for having acted in utter bad faith by dismissing the petitioners after having previously submitted the dispute to the NLRC

*D*

Union officers who did not knowingly participate in the strike do not lose their employment status

*E*

The responsibility for illegal acts committed in the course of a strike is individual and not collective

*F*

The January 5, 1994 incident does not warrant the dismissal of the petitioners involved thereat

*G*

The penalty, if any, imposable on union officers should be suspension and not dismissal

II

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN HOLDING THAT THE STRIKE WAS ILLEGAL

*A*

The test of good faith laid down by this Honorable Court is whether the union is of the reasonable belief that the management was committing an unfair labor practice

*B*

The decision as to when to declare the strike is wholly dependent on the union, and the same cannot negate good faith

*C*

The Court of Appeals committed grave error in concluding that this Court had already ruled on the validity of the implementation of the Job Evaluation Program and no longer considered the evidence presented by petitioners to establish unfair labor practice on the part of the HSBC

*D*

The doctrine automatically making a strike illegal due to non-compliance with the mandatory procedural requirements needs to be revisited

The petitioners argue that they were illegally dismissed; that the CA erred in selectively applying the twin notice requirement; that in the case of the Union officers, there must be a prior showing that they had participated in the illegal strike before they could be terminated from employment, but that HSBC did not make such showing, as, in fact, petitioners Carmina C. Rivera and Mario T. Fermin were on leave during the period of the strike;[33] that they could not be dismissed on the ground of insubordination or abandonment in view of participation in a concerted action being a guaranteed right; that their participation in the concerted activities out of their sincere belief that HSBC had committed ULP in implementing the JEP constituted good faith to be appreciated in their favor; that their actions merited only their suspension at most, not the extreme penalty of dismissal; and that the prevailing rule that non-compliance with the procedural requirements under the *Labor Code* before staging a strike would invalidate the strike should be revisited because the amendment under Batas Pambansa Blg. 227 indicated the legislative intent to ease the restriction on the right to strike.

HSBC counters that the appeal raises factual issues already settled by the CA, NLRC, and the LA, rendering such issues inappropriate for determination in this appeal; that it was not liable for illegal dismissal because the petitioners had willfully staged their illegal strike without prior compliance with Article 263 of the *Labor Code*[34] that the procedural requirements of Article 263 of the *Labor Code* were mandatory and indispensable conformably with Article 264[35] of the *Labor Code,* which, in relation to Article 263(c), (d) and (f), expressly made such non-

---

[33] *Id.* at 28-29.

[34] *Id.* at 254-258.

[35] Now Art. 279 pursuant to DOLE Department Advisory No. 01, Series of 2015.

compliance a prohibited activity; that for this reason Article 264 penalized the Union officers who had participated in the illegal strike with loss of their employment status;[36] that good faith could not be accorded to the petitioners because aside from the non-compliance with the mandatory procedure, they did not present proof to show that the strike had been held for a lawful purpose, or that the JEP had amounted to ULP, or that they had made a sincere effort to settle the disagreement;[37] and that as far as the 18 employees were concerned, they were entitled only to nominal damages, not backwages, following the ruling in *Agabon v. National Labor Relations Commission*[38] that meanwhile modified the doctrine in *Serrano v. National Labor Relations Commission.*[39]

Two main issues to be resolved are, therefore, namely: (1) whether the strike commenced on December 22, 1993 was lawfully conducted; and (2) whether the petitioners were illegally dismissed.

**Ruling of the Court**

We **PARTLY GRANT** the petition for review on *certiorari.*

I

**Non-compliance with Article 263 of the *Labor Code* renders a labor strike illegal**

The right to strike is a constitutional and legal right of all workers because the strike, which seeks to advance their right to improve the terms and conditions of their employment, is recognized as an effective weapon of labor in their struggle for a decent existence. However, the right to strike as a means for the attainment of social justice is never meant to oppress

---

[36] *Id.* at 519-520.

[37] *Id.* at 523-533.

[38] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[39] *Rollo*, pp. 545-548.

or destroy the employers. Thus, the law prescribes limits on the exercise of the right to strike.[40]

Article 263 of the *Labor Code* specifies the limitations on the exercise of the right to strike, *viz.:*

> Article 263. *Strikes, picketing, and lockouts.* x x x
>
> x x x x x x x x x
>
> (c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employers may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling off period shall not apply and the union may take action immediately.
>
> (d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.
>
> (e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.
>
> (f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that

---

[40] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, G.R. Nos. 169829-30, April 18, 2008, 551 SCRA 594, 607; *Association of Independent Unions in the Philippines (AUIP) v. National Labor Relations Commission*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 229.

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

x x x x x x x x x

The procedural requirements for a valid strike are, therefore, the following, to wit: (1) a notice of strike filed with the DOLE at least 30 days before the intended date thereof, or 15 days in case of ULP; (2) a strike vote approved by the majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (3) a notice of the results of the voting at least seven days before the intended strike given to the DOLE. These requirements are mandatory, such that non-compliance therewith by the union will render the strike illegal.[41]

According to the CA, the petitioners neither filed the notice of strike with the DOLE, nor observed the cooling-off period, nor submitted the result of the strike vote. Moreover, although the strike vote was conducted, the same was done by open, not secret, balloting,[42] in blatant violation of Article 263 and Section 7, Rule XIII of the *Omnibus Rules Implementing the Labor*

---

[41] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*, G.R. No. 165756, June 5, 2009, 588 SCRA 497, 515; *First City Interlink Transportation Co., Inc. v. Roldan-Confesor*, G.R. No. 106316, May 5, 1997, 272 SCRA 124, 130-131.

[42] *Rollo*, p. 84.

*Code.*[43] It is not amiss to observe that the evident intention of the requirements for the strike-notice and the strike-vote report is to reasonably regulate the right to strike for the attainment of the legitimate policy objectives embodied in the law.[44] As such, the petitioners committed a prohibited activity under Article 264(a) of the *Labor Code,* and rendered their strike illegal.

We underscore that the language of the law itself unmistakably bears out the mandatory character of the limitations it has prescribed, to wit:

> Art. 264. Prohibited activities. - **(a) No labor organization or employer shall declare a strike or lockout** without first having bargained collectively in accordance with Title VII of this Book or **without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the [Department]**. (emphasis supplied)
>
> x x x x x x x x x

Accordingly, the petitioners' plea for the revisit of the doctrine to the effect that the compliance with Article 263 was mandatory was entirely unwarranted. It is significant to remind that the doctrine has not been established by judicial declaration but by congressional enactment. *Verba legis non est recedendum.* The words of a statute, when they are clear, plain and free from ambiguity, must be given their literal meaning and must be applied without interpretation.[45] Had the legislators' intention been to relax this restriction on the right of labor to engage in

---

[43] Section 10. Strike or lockout vote. A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings of referenda called for the purpose. x x x.

[44] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786 and 158789, October 19, 2007, 537 SCRA 171, 203.

[45] *National Federation of Labor v. National Labor Relations Commission (5th Division)*, G.R. No. 127718, March 2, 2000, 327 SCRA 158,165.

concerted activities, they would have stated so plainly and unequivocally.

II

**Commission of unlawful acts during the strike further rendered the same illegal**

The petitioners insist that all they did was to conduct an orderly, peaceful, and moving picket. They deny employing any act of violence or obstruction of HSBC's entry and exit points during the period of the strike.

The contrary was undeniably true. The strike was far from orderly and peaceful. HSBC's claim that from the time when the strike was commenced on December 22, 1993 the petitioners had on several instances obstructed the ingress into and egress from its offices in Makati and in Pasig was not competently disputed, and should thus be accorded credence in the light of the records. We agree with HSBC, for all the affidavits[46] and testimonies of its witnesses,[47] as well as the photographs[48] and the video recordings[49] reviewed by LA Pati depicted the acts of obstruction, violence and intimidation committed by the petitioners during their picketing. It was undeniable that such acts of the strikers forced HSBC's officers to resort to unusual means of gaining access into its premises at one point.[50] In this connection, LA Pati even observed as follows:

---

[46] *Rollo*, pp. 634-730.

[47] CA *rollo*, Volume II, pp. 638-1764 (Annexes "11" to "22").

[48] Records, Volume Ill, p. 232 (Exhibits "K" - "K-240").

[49] Records, Volume IX.

[50] *Rollo*, pp. 657-658; Arturo Sule, HSBC's Assistant Manager of the Technical Services Division, attested that he entered and exited from the Ayala Branch on December 22, 1993 through a ladder from the rear parking compound of the adjacent building of Security Bank; that on December 23, 1993, he and other bank officers went to the parking area looking for ropes and ladders to use to gain entry, but they were foiled by the strikers who had meanwhile discovered their attempt to enter; and that the threats of harm from the strikers who had gathered outside the building forced

[I]t must be pointed out that the Bank has shown by clear and indubitable evidence that most of the respondents have actually violated the pr[o]scription provided for in paragraph (b) of Article 264 on free ingress and egress. The incident depicted in the video footage of 05 January 1994, which has been viewed several times during the trial and even privately, demonstrates beyond doubt that **the picket was a non- moving, stationary one — nothing less but a barricade. This office is more than convinced that the respondents, at least on that day, have demonstrated an abnormally high degree of hatred and anger at the Bank and its officers (including the Bank's chief executive officer who fell to the ground as a result of the pushing and shoving) leading them to do anything to carry out their resolve not to let anymore inside the Bank.** Additionally, as observed by this Labor Arbiter, the tensed and disquieting relation between the parties became all the more apparent during the actual hearings as clearly evident from the demeanor and actuations of the respondents.[51] (Emphasis supplied)

The situation during the strike actually went out of hand because of the petitioners' illegal conduct, compelling HSBC to secure an injunction from the NLRC as well as to file its petition for *habeas corpus* in the proper court in the interest of its trapped officers and employees; and at one point to lease an helicopter to extract its employees and officers from its premises on the eve of Christmas Day of 1993.

For sure, the petitioners could not justify their illegal strike by invoking the constitutional right of labor to concerted actions. Although the Constitution recognized and promoted their right to strike, they should still exercise the right *within the bounds of law*.[52] Those bounds had been well- defined and well-known. Specifically, Article 264(e) of the *Labor Code* expressly enjoined

---

him and his fellow bank officers to seek refuge in the guardhouse in the basement of Security Bank, whose guards allowed them do so.

[51] *Id.* at 1136-1137.

[52] Section 3, Article XlII of the 1987 Constitution explicitly states:

Section 3. x x x

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, **including the right to strike in accordance with law**. x x x. (bold emphasis supplied)

the striking workers engaged in picketing from committing any act of violence, coercion or intimidation, or from obstructing the free ingress into or egress from the employer's premises for lawful purposes, or from obstructing public thoroughfares.[53] The employment of prohibited means in carrying out concerted actions injurious to the right to property of others could only render their strike illegal. Moreover, their strike was rendered unlawful because their picketing which constituted an obstruction to the free use of the employer's property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance, should be regulated.[54] In fine, the strike, even if justified as to its ends, could become illegal because of the means employed, especially when the means came within the prohibitions under Article 264(e) of the *Labor Code*.[55]

## III

## Good faith did not avail because of the patent violation of Article 263 of the *Labor Code*

The petitioners assert their good faith by maintaining that their strike was conducted out of their sincere belief that HSBC had committed ULP in implementing the JEP. They had also hoped that HSBC would be willing to negotiate matters related to the JEP considering that the economic aspect of the CBA was set to expire on March 31, 1993.

We rule out good faith on the part of the petitioners.

The petitioners' disregard of the procedural requirements for conducting a valid strike negated their claim of good faith. For their claim to be upheld, it was not enough for them to

---

[53] See Appendix 4, *Guidelines Governing Labor Relations, Primer on Strike, Picketing and Lockout* (Second Edition), http://ncmb.ph/Publications/Manual%20on520Strike/MOS.HTM, (last visited February 8, 2016).

[54] *A. Soriano Aviation v. Employees Association of A. Soriano Aviation*, G.R. No. 166879, August 14, 2009, 596 SCRA 189, 196.

[55] *PHIMCO Industries, Inc. v. PHIMCO Industries Labor Association (PlLA)*, G.R. No. 170830, August 11, 2010, 628 SCRA 119, 135.

believe that their employer was guilty of ULP, for they must also sufficiently show that the strike was undertaken with a modicum of obeisance to the restrictions on their exercise of the right to strike prior to and during its execution as prescribed by the law. They did not establish their compliance with the requirements specifically for the holding of the strike vote and the giving of the strike notice.[56]

The petitioners should entirely bear the consequence of their non- compliance with the legal requirements. As we said in *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA)*:[57]

[W]e do not find any reason to deviate from our rulings in *Gold City Integrated Port Service, Inc. and Nissan Motors Philippines, Inc.* It bears emphasis that the strike staged by the Union in the instant case was illegal for its procedural infirmities and for defiance of the Secretary's assumption order. The CA, the NLRC and the Labor Arbiter were unanimous in finding that bad faith existed in the conduct of the subject strike. The relevant portion of the CA Decision states:

> x x x **We cannot go to the extent of ascribing good faith to the means taken in conducting the strike.** The requirement of the law is simple, that is—I. Give a Notice of Strike; 2. Observe the cooling period; 3. Observe the mandatory seven day strike ban; 3. If the act is union busting, then the union may strike doing away with the cooling-off period, subject only to the seven-day strike ban. To be lawful, a strike must simply have a lawful purpose and should be executed through lawful means. **Here, the union cannot claim good faith in the conduct of the strike because, as can be gleaned from the findings of the Labor Arbiter, this was an extensively coordinated strike having been conducted all throughout the offices of PILTEL all over the country. Evidently, the strike was planned.** Verily, they cannot now come to court hiding behind the shield of "good faith." Be that as it may, petitioners claim

---

[56] *National Federation of Labor v. National Labor Relations Commission*, G.R. No. 113466, December 15, 1997, 283 SCRA 275, 287-288 citing *First City Interlink Transportation Co. v. Roldan-Confesor*, G.R. No. 106316, May 5, 1997, 272 SCRA 124, 132.

[57] G.R. No. 160058, June 22, 2007, 525 SCRA 361.

good faith only in so far as their grounds for the strike but not on the conduct of the strike. Consequently, they still had to comply with the procedural requirements for a strike, which, in this case, they failed to do so.[58]

## IV

## The finding on the illegal strike did not justify the wholesale termination of the strikers from employment

The next issue to resolve is whether or not HSBC lawfully dismissed the petitioners for joining the illegal strike.

As a general rule, the mere finding of the illegality of the strike does not justify the wholesale termination of the strikers from their employment.[59] To avoid rendering the recognition of the workers' right to strike illusory, the responsibility for the illegal strike is individual instead of collective.[60] The last paragraph of Article 264(a) of the *Labor Code* defines the norm for terminating the workers participating in an illegal strike, *viz.:*

Article 264. Prohibited Activities - x x x

x x x x x x x x x

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status:** *Provided,* That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. (emphasis supplied)

---

[58] *Id.* at 380.

[59] *Bacus v. Ople*, G.R. No. 56856, October 23, 1984, 132 SCRA 690, 703.

[60] *Shell Oil Workers' Union v. Shell Company of the Phil.*, G.R. No. L-28607, February 12, 1972, 43 SCRA 224, 228.

Conformably with Article 264, we need to distinguish between the officers and the members of the union who participate in an illegal strike. The officers may be *deemed terminated* from their employment upon a finding of their *knowing participation in the illegal strike,* but the members of the union shall suffer the same fate only if they are shown to have *knowingly participated in the commission of illegal acts during the strike.* Article 264 expressly requires that the officer must have "knowingly participated" in the illegal strike. We have explained this essential element in *Club Filipino, Inc. v. Bautista.*[61] thusly:

> Note that the verb "participates" is preceded by the adverb "knowingly." This reflects the intent of the legislature to require "knowledge" as a condition *sine qua non* before a union officer can be dismissed from employment for participating in an illegal strike. The provision is worded in such a way as to make it very difficult for employers to circumvent the law by arbitrarily dismissing employees in the guise of exercising management prerogative. This is but one aspect of the State's constitutional and statutory mandate to protect the rights of employees to self-organization.[62]

The petitioners assert that the CA erroneously affirmed the dismissal of Carmina Rivera and Mario Fermin by virtue of their being officers of the Union despite lack of proof of their having participated in the strike.

The assertion is partly correct.

In the case of Fermin, HSBC did not satisfactorily prove his presence during the strike, much less identify him as among the strikers. In contrast, Union president Ma. Dalisay dela Chica testified that Fermin was not around when the Union's Board met after the strike vote to agree on the date of the strike.[63] In that regard, Corazon Fermin, his widow, confirmed the Union president's testimony by attesting that her husband had been

---

[61] G.R. No. 168406, July 13, 2009, 592 SCRA 471.

[62] *Id.* at 478-479.

[63] Records Vol. XVIII, TSN dated August 21, 1996, pp. 18-19.

on leave from work prior to and during the strike because of his heart condition.[64] Although Corazon also attested that her husband had fully supported the strike, his extending moral support for the strikers did not constitute sufficient proof of his participation in the strike in the absence of a showing of any overt participation by him in the illegal strike. The burden of proving the overt participation in the illegal strike by Fermin solely belonged to HSBC, which did not discharge its burden. Accordingly, Fermin, albeit an officer of the Union, should not be deemed to have lost his employment status.

However, the dismissal of Rivera and of the rest of the Union's officers, namely: Ma. Dalisay dela Chica, Marvilon Militante and David Atanacio, is upheld. Rivera admitted joining the picket line on a few occasions.[65] Dela Chica, the Union president, had instigated and called for the strike on December 22, 1993.[66] In addition, HSBC identified Dela Chica[67] and Militante[68] as having actively participated in the strike. Their responsibility as the officers of the Union who led the illegal strike was greater than the responsibility of the members simply because the former had the duty to guide their members to obey and respect the law.[69] When said officers urged and made their

---

[64] *Rollo*, pp. 218-219.

[65] *Id*. at 224.

[66] Records Vol. XVIII, TSN dated July 19, 1996, pp. 37-41.

[67] Records Vol. I, p. 189; HSBC's witness, Stephen So, declared in his affidavit that on December 22, 1993, he met with Dela Chica at the rear entrance of the bank's premise, and she urged him not to make any attempt to enter the bank.

[68] See Affidavits of Amelia Garcia (Records Vol. I, p. 207), David Hodgkinson (Records Vol. I, pp. 126-127), Mark Ivan Boyne (Records Vol. I, pp. 231-232), Stuart Paterson Milne (Records Vol. I, p. 233-234), Elaine Dichupa (Records Vol. II, pp. 142-143), Anna Marie Andres (Records Vol. I, pp. 235-237), Alejandro Custodio (Records Vol. I, pp. 238-239), Stephen Charles Banner (Records Vol. I, pp. 240-241), Rafael Laurel, Jr. (Records Vol. I, pp. 250-251) identified Militante to be actively participating and engaging in prohibited acts on several occasions.

[69] *Supra* note 55, at 381.

members violate the law, their dismissal became an appropriate penalty for their unlawful act.[70] The law granted to HSBC the option to dismiss the officers as a matter of right and prerogative.[71]

Unlike the Union's officers, the ordinary striking members could not be terminated for merely taking part in the illegal strike. Regardless of whether the strike was illegal or not, the dismissal of the members could be upheld only upon proof that they had committed illegal acts during the strike. They must be specifically identified because the liability for the prohibited acts was determined on an individual basis.[72] For that purpose, substantial evidence available under the attendant circumstances justifying the penalty of dismissal sufficed.[73]

We declare the illegality of the termination of the employment of the 18 members of the Union for failure of HSBC to prove that they had committed illegal acts during the strike. We also declare that Daisy Fagutao was unlawfully dismissed because HSBC did not adduce substantial evidence establishing her presence and her commission of unlawful acts during the strike.

We clarify that the 18 employees, including Fagutao and Union officer Fermin, were illegally dismissed because of lack of any valid ground to dismiss them, and for deprivation of procedural due process. Thus, we take exception to that portion of the NLRC ruling that held:

We here note that all of the herein named respondents were terminated by complainant for reasons other than their holding of an

---

[70] *Association of Independent Unions in the Philippines (AIUP) v. NLRC*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 230.

[71] *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission*, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

[72] *Solidbank Corporation v. Gamier*, G.R. No. 159460, November 15, 2010, 634 SCRA 554, 580.

[73] *Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 231.

participation in the illegal strike. Specifically, the grounds for their termination were enumerated in the notices of termination sent out by complainant as follows: abandonment, insubordination and seriously hampering operations. To Our mind, the complainant in the exercise of its management prerogative, had every reason to discipline these respondents for their disregard of the complainant's return-to-work order and for the damage sustained by reason thereof. Although these 18 respondents did not commit any illegal act during the strike, We can not simply ignore the fact that they nonetheless breached complainant's rules and regulations and which acts serve as valid causes to terminate their employment. These respondents took a risk when they refused to heed complainant's lawful order and knowingly caused damage and prejudice to complainant's operations; they should be prepared to take the consequences and be held accountable for their actions. Whether or not complainant observed due process prior to the termination of these respondents is however a totally different matter.[74]

We hold that said employees' right to exercise their right to concerted activities should not be defeated by the directive of HSBC for them to report back to work. Any worker who joined the strike did so precisely to assert or improve the terms and conditions of his work.[75] Otherwise, the mere expediency of issuing the return to work memorandum could suffice to stifle the constitutional right of labor to concerted actions. Such practice would vest in the employer the functions of a strike breaker,[76] which is prohibited under Article 264(c) of the *Labor Code*.

The petitioners' refusal to leave their cause against HSBC constituted neither insubordination nor abandonment. For insubordination to exist, the order must be: (1) reasonable and lawful; (2) sufficiently known to the employee; and (3) in

---

[74] *Rollo*, pp. 1155-1156.

[75] *Batangas Laguna Tayabas Bus Company v. NLRC*, G.R. No. 101858, August 21, 1992, 212 SCRA 792, 800.

[76] Strike-breaker is defined as "any person who obstructs, impedes, or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining. (Art. 219[r], *Labor Code*)

connection to his duties.[77] None of these elements existed in this case.

As to abandonment, two requirements need to be established, namely: (1) the failure to report for work or absence must be without valid or justifiable reason; and (2) there must be a clear intention to sever the employer-employee relationship. The second element is the more decisive factor and must be manifested by overt acts.[78] In that regard, the employer carries the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning.[79] However, the petitioners unquestionably had no intention to sever the employer-employee relationship because they would not have gone to the trouble of joining the strike had their purpose been to abandon their employment.[80]

Moreover, we cannot subscribe to the view that the striking employees should be dismissed for having seriously hampered and damaged HSBC's operations. In this aspect of the case, HSBC did not discharge its burden to prove that the acts of the employees constituted any of the just causes under the *Labor Code* or were prohibited under the company's code of conduct as to warrant their dismissal.

V

**Non-compliance with due process resulted in illegal dismissal; the employer's liability depended on the availing circumstances**

While Article 264 authorizes the termination of the union officers and employees, it does not remove from the employees

---

[77] *Pharmacia and Upjohn, Inc. v. Albayda Jr.*, G.R. No. 172724, August 23, 2010, 628 SCRA 544, 567.

[78] *Aboitiz Haulers, Inc. vs. Dimapatoi*, G.R. No. 148619, September 19, 2006, 502 SCRA 271, 291.

[79] *F.R.F. Enterprises, Inc. v. National Labor Relations Commission*, G.R. No. 105998, April 21, 1995, 243 SCRA 593, 597.

[80] *Id*.

their right to due process. Regardless of their actions during the strike, the employees remain entitled to an opportunity to explain their conduct and why they should not be penalized. In *Suico v. National Labor Relations Commission.*[81] we have reiterated the need for the employers to comply with the twin-notice requirement despite the cause for the termination arising from the commission of the acts prohibited by Article 264, thus:

> Art. 277(b) in relation to Art. 264(a) and (e) recognizes the right to due process of all workers, without distinction as to the cause of their termination. Where no distinction is given, none is construed. Hence, the foregoing standards of due process apply to the termination of employment of Suico, et al. even if the cause therefor was their supposed involvement in strike-related violence prohibited under Art. 264 (a) and (e).[82]

Consequently, failure of the employer to accord due process to its employees prior to their termination results in illegal dismissal.

The petitioners maintain that the CA applied the twin-notice requirement in favor of the 18 employees. HSBC disagrees, claiming instead that the award of backwages in favor of said employees should be modified following *Agabon.*

We partially agree with both parties.

Article 277(b)[83] of the *Labor Code* mandates compliance with the twin-notice requirement in terminating an employee, *viz.:*

> Article 277. Miscellaneous Provisions. -
>
> x x x x x x x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a

---

[81] G.R. No. 146762, January 30, 2007, 513 SCRA 325.

[82] *Id*. at 342.

[83] Now Article 292 pursuant to DOLE Department Advisory No. 01, Series of 2015.

just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires,** in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x (Emphasis supplied)

In *King of Kings Transport, Inc. v. Mamac*[84] we have laid down the contents of the notices to be served upon an employee prior to termination, as follows:

(1) The first written notice to be served on the employees should **contain the specific causes or grounds for termination** against them, and **a directive that the employees are given the opportunity to submit their written explanation within a reasonable period**. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice**. Lastly, the **notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.**

x x x x x x x x x

(3) After determining that termination of employment is justified, the employers shall serve the employees **a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2)**

---

[84] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

**grounds have been established to justify the severance of their employment**.[85] (Emphasis supplied)

HSBC admitted issuing two *pro forma* notices to the striking employees. The first notice, sent on December 22, 1993, reads as follows:

Re: NOTICE OF RETURN TO WORK

On _____ at ____ o'clock in the morning/afternoon, you "walked-out" by leaving your assigned work station without prior permission/ leave during work hours.

You are hereby directed to **report back for work at the start of banking hours on the day immediately following knowledge or receipt of this notice**. Should you report for work no disciplinary action shall be imposed on you. This is without prejudice to any action the Bank may take against the Union.

Should you fail to report back for work within the period abovestated, the Bank shall be forced to terminate your employment and take all appropriate measures to continue serving its clients.[86]

As the notice indicates, HSBC did not fully apprise the strikers of the ground under the *Labor Code* that they had supposedly violated. It also thereby deprived them the ample opportunity to explain and justify their actions. Instead, it manifested therein its firm resolve to impose the extreme penalty of termination should they not comply with the order. Plainly, the tenor of the notice was short of the requirements of a valid first notice.

The second notice was as follows:

Re: NOTICE OF TERMINATION

On _____, 1993, you and a majority of the rank-and-file staff "walked out" by leaving your respective work stations without prior leave and failed to return.

---

[85] *Id*. at 125-126.

[86] *Rollo*, p. 594.

You were directed to report back for work when a copy of the Bank's Memorandum/Notice to Return to Work dated _____ 1993 was:

1. [ ] Posted on the Bank's premises on _____

2. [ ] served on your (sic) personally on _____.

3. [ ] delivered to your last known address on file with the Bank and received by you (your representative) on _____.

Despite being directed to return to work, you have failed to comply.

Your "walk-out" is an illegal act amounting to abandonment, insubordination, and seriously hampering and damaging the bank's operations. Consequently, your employment with the Bank is terminated effective _____, 1993.[87]

The second notice merely ratified the hasty and unilateral decision to terminate the petitioners without the benefit of a notice and hearing. Hence, this notice should be struck down for having violated the right of the affected employees to due process.

The failure by HSBC to strictly observe the twin-notice requirement resulted in the illegal dismissal. However, the extent of its liability should depend on the distinct circumstances of the employees.

HSBC should be held liable for two types of illegal dismissal — the first type was made without both substantive and procedural due process, while the other was based on a valid cause but lacked compliance with procedural due process. To the first type belonged the dismissal of Fermin, Fagutao and the 18 employees initially identified by the NLRC, while the second type included the rest of the petitioners.

HSBC maintains that the dismissed 18 employees should not be entitled to backwages in conformity with *Agabon.*

We disagree. *Agabon* involved the second type of dismissal, not the first type to which the 18 employees belonged. The

---

[87] *Id*. at 596.

rule for employees unlawfully terminated without substantive and procedural due process is to entitle them to the reliefs provided under Article 279[88] of the *Labor Code,* that is, reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was withheld up to the time of actual reinstatement. However, the award of backwages is subject to the settled policy that when employees voluntarily go on strike, no backwages during the strike shall be awarded.[89]

As regards reinstatement, the lapse of 22 years since the strike now warrants the award of separation pay *in lieu of* reinstatement, the same to be equivalent of one (1) month for every year of service.[90] Accordingly, Fermin who did not participate in the strike, should be paid full backwages plus separation pay of one (1) month per year of service, while petitioners Isabelo Molo, Samuel Ellarma, Rebecca Fajardo, Melo Gaba, Nelia Deriada, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Blanche Motus, Antonio del Rosario, Maida Militante and Daisy Fagutao, who admitted their participation in the strike, were entitled to backwages except during the period of the strike, and to separation pay of one (1) month per year of service in lieu of reinstatement.

In *Agabon,* we said that a dismissal based either on a just or authorized cause but effected without due process should be upheld. The employer should be nonetheless liable for non-compliance with procedural due process by paying indemnity in the form of nominal damages amounting to ₱30,000.00.

---

[88] Now Article 294 pursuant to DOLE Department Order No. 01, Series of 2015.

[89] *Philippine Diamond Hotel & Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*, G.R. No. 158075, June 30, 2006, 494 SCRA 195, 214.

[90] *G&S Transport Corporation v. Infante*, G.R. No. 160303, September 13, 2007, 533 SCRA 288, 302.

In view of the non-observance of procedural due process by HSBC, the following petitioners should be entitled to nominal damages of ₱30,000.00 each,[91] namely: Ma. Dalisay dela Chica, Marvilon Militante, David Atanacio, Carmina Rivera, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina A. Ortiguerro, Ma. Asuncion Kimseng, Miguel R. Sison, Raul P. Geronimo, Marilou Cadena, Ana Tamonte, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gonzales, Ma. Corazon Baltazar, Maria Luz Jimenez, Editha Broqueza, Ma. Theresa Galang, Benigno Amoin, Gerardo de Leon, Rowena Ocampo, Hernan Camposanto, Lolito Hilis, Grace Mabunay, Joselito Gonzaga, Uldarico Pedida, Marcial Gonzaga, Jose Teodoro Motus, Emmanuel Justin Grey, Julieta Cruz, Rodrigo Durano, Catalina Yee, Menandro Caligagan, Leonila Perez, and Emma Mateo.

**ACCORDINGLY,** the Court **AFFIRMS** the decision promulgated on January 31, 2002 in CA-G.R. SP No. 56797 with **MODIFICATION** that respondent Hongkong & Shanghai Banking Corporation (HSBC) shall pay:

1. Mario S. Fermin, full backwages and separation pay equivalent to one (1) month per year of service in lieu of reinstatement;

2. Isabelo Molo, Samuel Ellarma, Rebecca Fajardo, Melo Gaba, Nelia Deriada, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Blanche Motus, Antonio del Rosario, Maida Militante and Daisy Fagutao, backwages except during the period of the strike, and separation pay equivalent to one (1) month per year of service in lieu of reinstatement; and

3. Ma. Dalisay dela Chica, Marvilon Militante, David Atanacio, Carmina Rivera, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina A. Ortiguerro, Ma. Asuncion Kimseng, Miguel R. Sison, Raul P. Geronimo, Marilou Cadena, Ana Tamonte, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gonzales, Ma. Corazon Baltazar, Maria Luz Jimenez, Editha

---

[91] *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, G.R. No. 170830, August 11, 2010, 628 SCRA 119, 152.

Broqueza, Ma. Theresa Galang, Benigno Amion, Gerardo de Leon, Rowena Ocampo, Hernan Camposanto, Lolito Hilis, Grace Mabunay, Joselito Gonzaga, Uldarico Pedida, Marcial Gonzaga, Jose Teodoro Motus, Emmanuel Justin Grey, Julieta Cruz, Rodrigo Durano, Catalina Yee, Menandro Caligagan, Leonila Perez and Emma Mateo, indemnity in the form of nominal damages in the amount of ₱30,000.00 each.

No pronouncement as to costs.

**SO ORDERED.**

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

---

**FIRST DIVISION**

[G.R. No. 160408. January 11, 2016]

**SPOUSES ROBERTO and ADELAIDA PEN**, *petititoners*, *vs*. **SPOUSES SANTOS and LINDA JULIAN**, *respondents*.

**SYLLABUS**

**1. CIVIL LAW; CIVIL CODE; CONTRACTS; *PACTUM COMMISSORIUM*, DEFINED; ELEMENTS; PRESENT IN CASE AT BAR.—** Article 2088 of the *Civil Code* prohibits the creditor from appropriating the things given by way of pledge or mortgage, or from disposing of them; *any stipulation to the contrary is null and void.* The elements for *pactum commissorium* to exist are as follows, to wit: *(a)* that there should be a pledge or mortgage wherein property is pledged or mortgaged by way of security for the payment of the principal obligation; and (*b)* that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged in the event of non-payment of the principal obligation within the stipulated period. The first element was present considering that the property

of the respondents was mortgaged by Linda in favor of Adelaida as security for the former's indebtedness. As to the second, the authorization for Adelaida to appropriate the property subject of the mortgage upon Linda's default was implied from Linda's having signed the blank deed of sale simultaneously with her signing of the real estate mortgage. The haste with which the transfer of property was made upon the default by Linda on her obligation, and the eventual transfer of the property in a manner not in the form of a valid *dacion en pago* ultimately confirmed the nature of the transaction as a *pactum commissorium.*

2. **ID.; ID.; ID.; *DACION EN PAGO*; NATURE, EXPLAINED; ELEMENTS.—** *Dacion en pago* is in the nature of a sale because property is alienated in favor of the creditor in satisfaction of a debt in money. For a valid *dacion en pago* to transpire, however, the attendance of the following elements must be established, namely: *(a)* the existence of a money obligation; *(b)* the alienation to the creditor of a property by the debtor with the consent of the former; and (c) the satisfaction of the money obligation of the debtor. To have a valid *dacion en pago,* therefore, the alienation of the property must fully extinguish the debt.

3. **ID.; ID.; ID.; ELEMENTS.—** According to Article 1318 of the *Civil Code,* the requisites for any contract to be valid are, namely: *(a)* the consent of the contracting parties; (*b)* the object; and (*c)* the consideration. There is a perfection of a contract when there is a meeting of the minds of the parties on each of these requisites.

4. **ID.; ID.; ID.; SALE; WHEN PERFECTED; NOT ESTABLISHED IN CASE AT BAR.—** In a sale, the contract is perfected at the moment when the seller obligates herself to deliver and to transfer ownership of a thing or right to the buyer for a price certain, as to which the latter agrees. The absence of the consideration from Linda's copy of the deed of sale was credible proof of the lack of an essential requisite for the sale. In other words, the meeting of the minds of the parties so vital in the perfection of the contract of sale did not transpire. And, even assuming that Linda's leaving the consideration blank implied the authority of Adelaida to fill in that essential detail in the deed of sale upon Linda's default on the loan, the conclusion of the CA that the deed of sale was a *pactum*

*commisorium* still holds, for, as earlier mentioned, all the elements of *pactum commisorium* were present.

**5. ID.; ID.; ID.; LOAN; INTEREST; MONETARY INTEREST DISTINGUISHED FROM COMPENSATORY INTEREST.—** Interest that is the compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest. On the other hand, interest that may be imposed by law or by the courts as penalty or indemnity for damages is called compensatory interest. In other words, the right to recover interest arises only either by virtue of a contract or as damages for delay or failure to pay the principal loan on which the interest is demanded.

**6. ID.; ID.; ID.; ID.; MONETARY INTEREST; TWO REQUIREMENTS IN ORDER TO IMPOSE MONETARY INTEREST, NOT PRESENT IN CASE AT BAR.—** Pursuant to Article 1956 of the *Civil Code,* no interest shall be due unless it has been expressly stipulated in writing. In order for monetary interest to be imposed, therefore, two requirements must be present, specifically: *(a)* that there has been an express stipulation for the payment of interest; and (*b)* that the agreement for the payment of interest has been reduced in writing. Considering that the promissory notes contained no stipulation on the payment of monetary interest, monetary interest cannot be validly imposed.

**7. ID.; DAMAGES; COMPENSATORY INTEREST; BANKO SENTRAL NG PILIPINAS MONETARY BOARD RESOLUTION NO. 796 DATED MAY 16, 2013, LOWERED TO 6% PER ANNUM THE LEGAL RATE OF INTEREST FOR A LOAN OR FORBEARANCE OF MONEY, GOODS OR CREDIT STARTING JULY 1, 2013; APPLICATION IN CASE AT BAR.—** The CA properly imposed compensatory interest to offset the delay in the respondents' performance of their obligation. Nonetheless, the imposition of the legal rate of interest should be modified to conform to the prevailing jurisprudence. The rate of 12% *per annum* imposed by the CA was the rate set in accordance with *Eastern Shipping Lines, Inc., v. Court of Appeals.* In the meanwhile, Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, amending Section 2 of Circular No. 905, Series of 1982, and Circular No. 799, Series of 2013, has lowered to 6% *per annum* the legal rate of interest for a loan or forbearance of money, goods or credit starting July 1, 2013. This revision

is expressly recognized in *Nacar v. Gallery Frames.* It should be noted, however, that imposition of the legal rate of interest at 6% *per annum* is prospective in application. Accordingly, the legal rate of interest on the outstanding obligation of ₱43,492.15 as of June 28, 1990, as the CA found, should be as follows: (*a*) from the time of demand on October 13, 1994 until June 30, 2013, the legal rate of interest was 12% *per annum* conformably with *Eastern Shipping lines;* and (*b*) following *Nacar,* from July 1, 2013 until full payment, the legal interest is 6% *per annum.*

**APPEARANCES OF COUNSEL**

*Farcon Gabriel Farcon & Associates* for petitioners.
*Apolonio A. Padua, Jr.,* for respondents.

**D E C I S I O N**

**BERSAMIN, *J.*:**

The petitioners who were the buyers of the mortgaged property of the respondents seek the reversal of the decision promulgated on October 20, 2003,[1] whereby the Court of Appeals (CA) affirmed with modification the adverse judgment rendered on August 30, 1999 by the Regional Trial Court (RTC), Branch 77, in Quezon City.[2] In their respective rulings, the CA and the RTC both declared the deed of sale respecting the respondents' property as void and inexistent, albeit premised upon different reasons.

**Antecedents**

The CA summarized the antecedent facts and procedural matters in its assailed decision as follows:

---

[1] *Rollo,* pp. 32-41; penned by Associate Justice Rosmari D. Carandang, with Associate Justices Eugenio S. Labitoria (retired) and Mercedes Gozo-Dadole (retired) concurring.

[2] *Id.* at 85-91; penned by Judge Vivencio S. Baclig (retired).

On April 9, 1986, the appellees (the Julians) obtained a ₱60,000.00 loan from appellant Adelaida Pen. On May 23, 1986 and on the (sic) May 27, 1986, they were again extended loans in the amounts of ₱50,000.00 and ₱10,000.00, respectively by appellant Adelaida. The initial interests were deducted by appellant Adelaida, (1) ₱3,600.00 from the ₱60,000.00 loan; (2) ₱2,400.00 from the ₱50,000.00 loan; and (3) ₱600.00 from the ₱10,000.00 loan. Two (2) promissory notes were executed by the appellees in favor of appellant Adelaida to evidence the foregoing loans, one dated April 9, 1986 and payable on June 15, 1986 for the ₱60,000.00 loan and another dated May 1986 payable on July 1986 for the ₱50,000.00 loan. Both loans were charged interest at 6% per month. As security, on May 23, 1986, the appellees executed a Real Estate Mortgage over their property covered by TCT No. 327733 registered under the name of appellee Santos Julian, Jr. The owner's duplicate of TCT No. 327733 was delivered to the appellants.

Appellant's version of the subsequent events run as follows: When the loans became due and demandable, appellees failed to pay despite several demands. As such, appellant Adelaida decided to institute foreclosure proceedings. However, she was prevailed upon by appellee Linda not to foreclose the property because of the cost of litigation and since it would cause her embarrassment as the proceedings will be announced in public places at the City Hall, where she has many friends. Instead, appellee Linda offered their mortgaged property as payment in kind. After the ocular inspection, the parties agreed to have the property valued at ₱70,000.00. Thereafter, on October 22, 1986 appellee executed a two (2) page Deed of Sale duly signed by her on the left margin and over her printed name. After the execution of the Deed of Sale, appellant Pen paid the capital gains tax and the required real property tax. Title to the property was transferred to the appellants by the issuance of TCT No. 364880 on July 17, 1987. A reconstituted title was also issued to the appellants on July 09, 1994 when the Quezon City Register of Deeds was burned (sic).

On July 1989, appellants allege that appellee Linda offered to repurchase the property to which the former agreed at the repurchase price of ₱436,115.00 payable in cash on July 31, 1989. The appellees failed to repurchase on the agreed date. On February 1990, appellees again offered to repurchase the property for the same amount, but they still failed to repurchase. On June 28, 1990, another offer was made to repurchase the property for the same amount. Appellee Linda offered to pay ₱100,000.00 in cash as sign of good faith. The offer

was rejected by appellant Adelaida. The latter held the money only for safekeeping upon the pleading of appellee Linda. Upon the agreement of the parties, the amount of ₱100,000.00 was deducted from the balance of the appellees' indebtedness, so that as of October 15, 1997, their unpaid balance amounted to ₱319,065.00. Appellants allege that instead of paying [the] said balance, the appellees instituted on September 8, 1994 the civil complaint and filed an adverse claim and lis pendens which were annotated at the back of the title to the property.

On the other hand, the appellees aver the following: At the time the mortgage was executed, they were likewise required by the appellant Adelaida to sign a one (1) page document purportedly an "Absolute Deed of Sale". Said document did not contain any consideration, and was "undated, unfilled and unnotarized". They allege that their total payments amounted to ₱115,400.00 and that their last payment was on June 28, 1990 in the amount of ₱100,000.00.

In December 1992, appellee Linda Julian offered to pay appellant Adelaida the amount of ₱150,000.00. The latter refused to accept the offer and demanded that she be paid the amount of ₱250,000.00. Unable to meet the demand, appellee Linda desisted from the offer and requested that she be shown the land title which she conveyed to the appellee Adelaida, but the latter refused. Upon verification with the Registry of Deeds of Quezon City, she was informed that the title to the mortgaged property had already been registered in the name of appellee Adelaida under TCT No. 364880, and that the transfer was entered on July 17, 1987. A reconstituted title, TCT No. RT-45272 (364880), also appeared on file in the Registry of Deeds replacing TCT No. 364880.

By reason of the foregoing discoveries, appellee filed an Affidavit of Adverse Claim on January 1993. Counsel for the appellees, on August 12, 1994, formally demanded the reconveyance of the title and/or the property to them, but the appellants refused. In the process of obtaining other documents; the appellees also discovered that the appellants have obtained several Declarations of Real Property, and a Deed of Sale consisting of two (2) pages which was notarized by one Atty. Cesar Ching. Said document indicates a consideration of ₱70,000.00 for the lot, and was made to appear as having been executed on October 22, 1986. On September 8, 1994, appellees filed a suit for the Cancellation of Sale, Cancellation of Title issued to the appellants; Recovery of Possession; Damages with Prayer for Preliminary Injunction. The complaint alleged that appellant Adelaida,

through obvious bad faith, maliciously typed, unilaterally filled up, and caused to be notarized the Deed of Sale earlier signed by appellee Julian, and used this spurious deed of sale as the vehicle for her fraudulent transfer unto herself the parcel of land covered by TCT No. 327733.[3]

## Judgment of the RTC

In its judgment rendered on August 30, 1999,[4] the RTC ruled in favor of the respondents. According greater credence to the version of the respondents on the true nature of their transaction, the trial court concluded that they had not agreed on the consideration for the sale at the time they signed the deed of sale; that in the absence of the consideration, the sale lacked one of the essential requisites of a valid contract; that the defense of prescription was rejected because the action to impugn the void contract was imprescriptible; and that the promissory notes and the real estate mortgage in favor of the petitioners were nonetheless valid, rendering the respondents liable to still pay their outstanding obligation with interest.

The RTC disposed thusly:

**WHEREFORE,** judgment is hereby rendered:

1. Declaring the Deed of Sale, dated October 22, 1986, void or inexistent;
2. Cancelling TCT No. RT-45272 (364480) and declaring it to be of no further legal force and effect;
3. Ordering the defendants to reconvey the subject property to the plaintiffs and to deliver to them the possession thereof; and
4. Ordering the plaintiffs to pay to the defendants the unpaid balance of their indebtedness plus accrued interest totaling ₱319,065.00 as of October 15, 1997, plus interests at the legal rate counted from the date of filing of the complaint and until the full payment thereof, without prejudice to the right of the defendants to

---

[3] *Id*. at 33-35.

[4] *Supra* note 2.

foreclose the mortgage in the event that plaintiffs will fail to pay their obligation.

No pronouncement as to cost.

**SO ORDERED**.[5]

### Decision of the CA

On appeal by the petitioners, the CA affirmed the RTC with modification under its assailed decision of October 20, 2003,[6] decreeing:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City is AFFIRMED WITH modification. Judgement is hereby rendered:

1. Declaring the Deed of Sale, dated October 22, 1986, void or inexistent;
2. Cancelling TCT No. RT-45272 (364880) and declaring it to be of no further legal force and effect;
3. Ordering the appellants-defendants to reconvey the subject property to the plaintiffs-appellees and to deliver to them the possession thereof; and
4. Ordering the plaintiffs-appellees to pay to the defendants the unpaid balance of their indebtedness, ₱43,492.15 as of June 28, 1990, plus interests at the legal rate of 12% *per annum* from said date and until the full payment thereof, without prejudice to the right of the defendants to foreclose the mortgage in the event that plaintiffs-appellees will fail to pay their obligation.

**SO ORDERED**.[7]

The CA pronounced the deed of sale as void but not because of the supposed lack of consideration as the RTC had indicated, but because of the deed of sale having been executed at the same time as the real estate mortgage, which rendered the sale

---

[5] *Rollo,* p. 91.

[6] *Supra* note 1.

[7] *Rollo,* p. 40.

as a prohibited *pactum commissorium* in light of the fact that the deed of sale was blank as to the consideration and the date, which details would be filled out upon the default by the respondents; that the promissory notes contained no stipulation on the payment of interest on the obligation, for which reason no monetary interest could be imposed for the use of money; and that compensatory interest should instead be imposed as a form of damages arising from Linda's failure to pay the outstanding obligation.

**Issues**

In this appeal, the petitioners posit the following issues, namely: (I) whether or not the CA erred in ruling against the validity of the deed of sale; and (2) whether or not the CA erred in ruling that no monetary interest was due for Linda's use of Adelaida's money.

**Ruling of the Court**

The appeal is partly meritorious.

That the petitioners are raising factual issues about the true nature of their transaction with the respondent is already of itself, sufficient reason to forthwith deny due course to the petition for review on *certiorari.* They cannot ignore that any appeal to the Court is limited to questions of law because the Court is not a trier of facts. As such, the factual findings of the CA should be respected and accorded great weight, and even finality when supported by the substantial evidence on record.[8] Moreover, in view of the unanimity between the RTC and the CA on the deed of sale being void, varying only in their justifications, the Court affirms the CA, and adopts its conclusions on the invalidity of the deed of sale.

Nonetheless, We will take the occasion to explain why we concur with the CA's justification in discrediting the deed of sale between the parties as *pactum commissorium.*

---

[8] *Bernales v. Heirs of Julian Sambaan,* G.R. No. 163271, January 15, 2010, 610 SCRA 90, 99.

Article 2088 of the *Civil Code* prohibits the creditor from appropriating the things given by way of pledge or mortgage, or from disposing of them; *any stipulation to the contrary is null and void.* The elements for *pactum commissorium* to exist are as follows, to wit: *(a)* that there should be a pledge or mortgage wherein property is pledged or mortgaged by way of security for the payment of the principal obligation; and *(b)* that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged in the event of non-payment of the principal obligation within the stipulated period.[9] The first element was present considering that the property of the respondents was mortgaged by Linda in favor of Adelaida as security for the former's indebtedness. As to the second, the authorization for Adelaida to appropriate the property subject of the mortgage upon Linda's default was implied from Linda's having signed the blank deed of sale simultaneously with her signing of the real estate mortgage. The haste with which the transfer of property was made upon the default by Linda on her obligation, and the eventual transfer of the propetiy in a manner not in the form of a valid *dacion en pago* ultimately confirmed the nature of the transaction as a *pactum commissorium.*

It is notable that in reaching its conclusion that Linda's deed of sale had been executed simultaneously with the real estate mortgage, the CA first compared the unfilled deed of sale presented by Linda with the notarized deed of sale adduced by Adelaida. The CA justly deduced that the completion and execution of the deed of sale had been conditioned on the non-payment of the debt by Linda, and reasonably pronounced that such circumstances rendered the transaction *pactum commissorium.* The Court should not disturb or undo the CA's conclusion in the absence of the clear showing of abuse, arbitrariness or capriciousness on the part of the CA.[10]

---

[9] *A. Francisco Realty and Development Corp. v. Court of Appeals*, G.R. No. 125055, October 30, 1998, 298 SCRA 349, 362.

[10] *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374, 382.

The petitioners have theorized that their transaction with the respondents was a valid *dacion en pago* by highlighting that it was Linda who had offered to sell her property upon her default. Their theory cannot stand scrutiny. *Dacion en pago* is in the nature of a sale because property is alienated in favor of the creditor in satisfaction of a debt in money.[11] For a valid *dacion en pago* to transpire, however, the attendance of the following elements must be established, namely: *(a)* the existence of a money obligation; *(b)* the alienation to the creditor of a property by the debtor with the consent of the former; and *(c)* the satisfaction of the money obligation of the debtor.[12] To have a valid *dacion en pago,* therefore, the alienation of the property must fully extinguish the debt. Yet, the debt of the respondents *subsisted* despite the transfer of the property in favor of Adelaida.

The petitioners insist that the parties agreed that the deed of sale would not yet contain the date and the consideration because they had still to agree on the price.[13] Their insistence is not supported by the established circumstances. It appears that two days after the loan fell due on October 15, 1986,[14] Linda offered to sell the mortgaged property;[15] hence, the parties made the ocular inspection of the premises on October 18, 1986. By that time, Adelaida had already become aware that the appraiser had valued the property at ₱70,000.00. If that was so, there was no plausible reason for still leaving the consideration on the deed of sale blank if the deed was drafted by Adelaida on October 20, 1986, especially considering that they could have conveniently communicated with each other in the meanwhile on this significant aspect of their transaction. It was

---

[11] *Dao Heng Bank, Inc. (now Banco de Oro Universal Bank) v. Laigo*, G.R. No. 173856, November 20, 2008, 571 SCRA 434, 442.

[12] *Rockville Excel International Exim Corporation v. Culla*, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 134.

[13] TSN, September 17, 1997, p. 42.

[14] *Id*. at 29.

[15] *Id*. at 32.

also improbable for Adelaida to still hand the unfilled deed of sale to Linda as her copy if, after all, the deed of sale would be eventually notarized on October 22, 1986.

According to Article 1318 of the *Civil Code,* the requisites for any contract to be valid are, namely: *(a)* the consent of the contracting parties; *(b)* the object; and (c) the consideration. There is a perfection of a contract when there is a meeting of the minds of the parties on each of these requisites.[16] The following passage has fittingly discussed the process of perfection in *Moreno, Jr. v. Private Management Office:*[17]

> To reach that moment of perfection, the parties must agree on the same thing in the same sense, so that their minds meet as to all the terms. They must have a distinct intention common to both and without doubt or difference; until all understand alike, there can be no assent, and therefore no contract. The minds of parties must meet at every point; nothing can be left open for further arrangement. So long as there is any uncertainty or indefiniteness, or future negotiations or considerations to be had between the parties, there is not a completed contract, and in fact, there is no contract at all.[18]

In a sale, the contract is perfected at the moment when the seller obligates herself to deliver and to transfer ownership of a thing or right to the buyer for a price certain, as to which the latter agrees.[19] The absence of the consideration from Linda's copy of the deed of sale was credible proof of the lack of an essential requisite for the sale. In other words, the meeting of the minds of the parties so vital in the perfection of the contract of sale did not transpire. And, even assuming that Linda's leaving the consideration blank implied the authority of Adelaida to fill in that essential detail in the deed of sale upon Linda's default on the loan, the conclusion of the CA that the deed of

---

[16] Article 1305 of the *Civil Code.*

[17] G.R. No. 159373, November 16, 2006, 507 SCRA 63.

[18] *Id*. at 72

[19] *Starbright Sales Enterprises, Inc., v. Philippine Realty Corporation,* G.R. No. 177936, January 18, 2012, 663 SCRA 326, 331.

sale was a *pactum commisorium* still holds, for, as earlier mentioned, all the elements of *pactum commisorium* were present.

Anent interest, the CA deleted the imposition of monetary interest but decreed compensatory interest of 12% *per annum.*

Interest that is the compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest. On the other hand, interest that may be imposed by law or by the courts as penalty or indemnity for damages is called compensatory interest. In other words, the right to recover interest arises only either by virtue of a contract or as damages for delay or failure to pay the principal loan on which the interest is demanded.[20]

The CA correctly deleted the monetary interest from the judgment. Pursuant to Article 1956 of the *Civil Code,* no interest shall be due unless it has been expressly stipulated in writing. In order for monetary interest to be imposed, therefore, two requirements must be present, specifically: *(a)* that there has been an express stipulation for the payment of interest; and *(b)* that the agreement for the payment of interest has been reduced in writing.[21] Considering that the promissory notes contained no stipulation on the payment of monetary interest, monetary interest cannot be validly imposed.

The CA properly imposed compensatory interest to offset the delay in the respondents' performance of their obligation. Nonetheless, the imposition of the legal rate of interest should be modified to conform to the prevailing jurisprudence. The rate of 12% *per annum* imposed by the CA was the rate set in accordance with *Eastern Shipping Lines, Inc., v. Court of Appeals.*[22] In the meanwhile, Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013,

---

[20] *Siga-an v. Villanueva*, G.R. No. 173227, January 20, 2009, 576 SCRA 696, 704.

[21] *Id*. at 704-705.

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

amending Section 2 of Circular No. 905, Series of 1982, and Circular No. 799, Series of 2013, has lowered to 6% *per annum* the legal rate of interest for a loan or forbearance of money, goods or credit starting July 1, 2013. This revision is expressly recognized in *Nacar v. Gallery Frames.*[23] It should be noted, however, that imposition of the legal rate of interest at 6% *per annum* is prospective in application.

Accordingly, the legal rate of interest on the outstanding obligation of ₱43,492.15 as of June 28, 1990, as the CA found, should be as follows: *(a)* from the time of demand on October 13, 1994 until June 30, 2013, the legal rate of interest was 12% *per annum* conformably with *Eastern Shipping Lines;* and *(b)* following *Nacar,* from July 1, 2013 until full payment, the legal interest is 6% *per annum.*

**WHEREFORE,** the Court **AFFIRMS** the decision promulgated on October 20, 2003 subject to the **MODIFICATION** that the amount of ₱43,492.15 due from the respondents shall earn legal interest of 12% *per annum* reckoned from October 13, 1994 until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment.

Without pronouncement on costs of suit.

**SO ORDERED.**

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

---

[23] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 454-456.

**FIRST DIVISION**

[G.R. No. 165223. January 11, 2016]

**WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),** *petitioner*, *vs.* **MARIO I. MOLINA,** *respondent.*

**SYLLABUS**

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MISCONDUCT IN OFFICE; TO WARRANT REMOVAL FROM OFFICE, MISCONDUCT MUST HAVE DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE OFFICIAL DUTIES AMOUNTING EITHER TO MALADMINISTRATION OR WILLFUL, INTENTIONAL NEGLECT AND FAILURE TO DISCHARGE THE DUTIES OF THE OFFICE.—** Misconduct in office, by uniform legal definition, is such misconduct that affects his performance of his duties as an officer and not such only as affects his character as a private individual. To warrant removal from office, it must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office. Moreover, it is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." It becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."

2. **ID.; ID.; ID.; PREVENTIVE SUSPENSION; TWO TYPES OF PREVENTIVE SUSPENSION, EXPLAINED; APPLICATION IN CASE AT BAR.—** In *Gloria v. Court Appeals,* the Court has distinguished the two types of preventive suspension of civil service employees charged with offenses punishable by removal or suspension, to wit: (1) preventive suspension pending investigation; and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the

respondent is exonerated. The respondent's preventive suspension was done pending investigation. In this regard, an employee who is placed under preventive suspension pending investigation is not entitled to compensation because such suspension is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. The fact that the charge against the respondent was subsequently declared to lack factual and legal bases did not, *ipso facto,* render the preventive suspension without legal basis. x x x *Gloria* has clarified that the preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty is authorized by the Civil Service Law, and cannot be considered unjustified even if the charges are ultimately dismissed so as to justify the payment of salaries to the employee concerned. Moreover, backwages corresponding to the period of suspension of a civil service employee who is reinstated is proper only if he is found innocent of the charges *and* the suspension is declared to be unjustified. Considering that the respondent's preventive suspension had legal basis, he was not entitled to backwages.

**3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PRIOR FILING OF MOTION FOR RECONSIDERATION, REQUIRED; EXCEPTIONS.—** We find and hold that the respondent was not strictly bound by the rule on exhaustion of administrative remedies. His failure to file the motion for reconsideration did not justify the immediate dismissal of the petition for *certiorari,* for we have recognized certain exceptional circumstances that excused his non-filing of the motion for reconsideration. Among the exceptional circumstances are the following, namely: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a Department Secretary whose acts, as an *alter ego* of the President, bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy;

(11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

**APPEARANCES OF COUNSEL**

*The Investigation Unit Office of the President and General Manager Government Service Insurance System* for petitioner.

*Barbers Molina & Molina* for respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

For review is the decision promulgated on April 29, 2004,[1] whereby the Court of Appeals (CA) nullified the Memorandum dated September 8, 2003 by which the petitioner, in his capacity as the President of the Government Service Insurance System (GSIS), had charged the respondent, an Attorney V in the Litigation Department of the Legal Service Group of the GSIS, with grave misconduct and preventively suspended him for 60 days.

**Antecedents**

In his affidavit, Elino F. Caretero pointed to the respondent as the person who had handed to him on August 26, 2003 the letter entitled *Is It True* supposedly written by one R. Ibasco containing "scurrilous and libellous statements" against petitioner.[2] Considering that Ibasco denied authorship of the letter, the finger of suspicion came to point at the respondent, who was consequently administratively investigated for grave

---

[1] *Rollo,* pp. 35-41; penned by Associate Justice Edgardo F. Sundiam (retired/deceased), and concurred in by now Presiding Justice Andres B. Reyes, Jr. and Associate Justice Danilo B. Pine (retired).

[2] *Id*. at 36.

misconduct. After the investigation, the Investigation Unit transmitted its Memorandum dated September 1, 2003 to the respondent to require him to explain the circulation and publication of the letter, and to show cause why no administrative sanction should be imposed on him for doing so.[3] In response, he denied the imputed act.[4]

Thereafter, the petitioner issued Memorandum dated September 8, 2003 to formally charge the respondent with grave misconduct, and to preventively suspend him for 60 days effective upon receipt.[5]

The respondent sought the dismissal of the charge on the ground of its being baseless; and requested the conduct of a formal investigation by an impartial body.[6]

The respondent also instituted in the CA a special civil action for *certiorari* to challenge the legality of the Memorandum dated September 8, 2003.[7]

On April 29, 2004, the CA promulgated its assailed decision,[8] the dispositive portion of which reads:

**WHEREFORE,** premises considered, the petition is **GRANTED** and the assailed Memorandum, dated September 8, 2003, issued by GSIS President and General Manager Winston Garcia formally charging petitioner with grave misconduct and preventively suspending him for a period of 60-days is hereby **NULLIFIED.** Petitioner is entitled to his back wages during the period of his preventive suspension.

**SO ORDERED**.[9]

---

[3] *Id*. at 37.

[4] *Id*. at 37-38.

[5] *Id*. at 38-39.

[6] *Id*. at 39.

[7] *Id*. at 39-40.

[8] *Supra* note I.

[9] *Rollo,* p. 44.

The petitioner moved for reconsideration, but the CA denied his motion on September 6, 2004.[10]

Hence, this appeal by petition for review on *certiorari,* with the petitioner contending that the CA gravely erred:

a. x x x in holding that the filing of the Formal Charge and the Order of Preventive Suspension was arbitrary and uncalled for;

b. x x x in nullifying the Formal Charge of Grave Misconduct against the respondent for the reason that it has "no factual or legal basis";

c. x x x in granting the petition for certiorari in complete disregard of the power of the petitioner to impose discipline against employees of the GSIS;

d. x x x in nullifying the Order of Preventive Suspension;

e. x x x in failing to appreciate and apply the principle of Exhaustion of Administrative Remedies in giving due course to the petition of the petitioner; and

f. x x x in granting the petition of the respondent for backwages during the period of preventive suspension.[11]

The petitioner argues that it was in his power as the President and General Manager of the GSIS to impose disciplinary action on the respondent, pursuant to Section 47 of the *Administrative Code of 1987;* that the characterization of the respondent's act as grave misconduct was not arbitrary because the latter had intentionally passed on or caused the circulation of the malicious letter, thereby transgressing "some established and definite rule of action" that sufficiently established a *prima facie* case for an administrative charge; that the respondent had thereby violated his solemn duty to defend and assist the petitioner in disregard of his "legal, moral or social duty" to stop or at discourage the publication or circulation of the letter.[12] He submits that the respondent's preventive suspension was done in accordance with

---

[10] *Id*. at 46.

[11] *Id*. at 10-11.

[12] *Id*. at 11-21.

the Civil Service Uniform Rules on Administrative Cases, and upon an evaluation of the evidence on record.[13]

In contrast, the respondent denies that his acts constituted grave misconduct.[14]

**Issue**

Did the CA commit reversible error in annulling the petitioner's Memorandum dated September 8, 2003?

**Ruling of the Court**

The appeal is partly meritorious.

There is no question about the power of the petitioner as the President and General Manager of the GSIS to remove, suspend or otherwise discipline for cause erring GSIS personnel like the respondent. Section 45 of Republic Act No. 8291 (GSIS *Act of 1997)* explicitly provides such authority, *viz.*:

> Section 45. Powers and Duties of the President and General Manager. x x x The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations x x x.

The issue now is whether or not the petitioner, in the exercise of such authority, had sufficient basis to formally charge the respondent with grave misconduct and impose preventive suspension as a consequence. To resolve this issue, we need to ascertain if the respondent's act of handing over the letter to Caretero constituted grave misconduct.

The CA concluded that the act of the respondent of handing over the letter to Caretero did not constitute grave misconduct because the act did not show or indicate the elements of corruption, or the clear intent to violate the law, or flagrant disregard of established rule.[15]

---

[13] *Id*. at 22.

[14] *Id*. at 56-58.

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

The Court concurs with the CA.

Misconduct in office, by uniform legal definition, is such misconduct that affects his performance of his duties as an officer and not such only as affects his character as a private individual.[16] To warrant removal from office, it must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[17] Moreover, it is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[18] It becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."[19]

The record contains nothing to show that the respondent's act constituted misconduct. The passing of the letter to Caretero did not equate to any "transgression" or "unlawful behavior," for it was an innocuous act that did not breach any standard, norm or rule pertinent to his office. Neither could it be regarded as "circulation" of the letter inasmuch as the letter was handed only to a single individual who just happened to be curious about the paper the respondent was then holding in his hands. The handing of the letter occurred in ostensibly innocent circumstances on board the elevator in which other employees or passengers were on board. If the motive of the respondent was to pass the letter in order to publicize its contents, he should have made more copies of the letter. But that was not so, considering that Caretero categorically affirmed in his affidavit about asking the respondent what he had wanted to do with the letter, to wit: *Do you want me to photocopy the document Sir?,*

---

[16] *Amosco v. Magro,* Adm. Matter No. 439-MJ, September 30, 1976, 73 SCRA 107, l08-109.

[17] *Id*. at 109.

[18] *Civil Service Commission v. Ledesma,* G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[19] *Id*.

but the respondent had simply replied: *HINDI NA SA IYO NA LANG YAN.*[20] It is plain, then, that intent to cause the widespread dissemination of the letter in order to libel the petitioner could not be justifiably inferred.

To be sure, the respondent's act could not be classified as pertaining to or having a direct connection to the performance of his official duties as a litigation lawyer of the GSIS. The connection was essential to a finding of misconduct, for without the connection the conduct would not be sanctioned as an administrative offense. In *Villanueva v. Court of Appeals,*[21] for instance, the Court reversed the conclusion of the CA that the petitioner's offense related to his official functions by virtue of the offense having been made possible precisely by his official functions; that his position had enabled the petitioner to have free rein inside the building even after office hours; and that he had used his office to commit the misconduct for which he was being charged, with the Court pointing out that the alleged offense was in no way connected with the performance of his functions and duties as a public officer.

Nonetheless, the Court cannot join the CA in its ruling that the respondent was entitled to backwages during the time that he was under preventive suspension.

In *Gloria v. Court Appeals,*[22] the Court has distinguished the two types of preventive suspension of civil service employees charged with offenses punishable by removal or suspension, to wit: (1) preventive suspension pending investigation;[23] and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated.[24]

---

[20] *Rollo,* p. 37.

[21] *Villanueva v. Court of Appeals,* G.R. No. 167726, July 20, 2006, 495 SCRA 824.

[22] G.R. No. 131012, April 21, 1999, 306 SCRA 287, 308.

[23] Section 51, Book V, Title I, Subtitle A, Executive Order No. 292 (*Administrative Code of 1987*).

[24] Section 47(4), *id*.

The respondent's preventive suspension was done pending investigation. In this regard, an employee who is placed under preventive suspension pending investigation is not entitled to compensation because such suspension is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation.[25]

The fact that the charge against the respondent was subsequently declared to lack factual and legal bases did not, *ipso facto,* render the preventive suspension without legal basis. Civil Service Commission (CSC) Resolution No. 030502 issued on May 5, 2003 provides, in part, that:

> 4. The imposition of preventive suspension shall be confined to the well-defined instances set forth under the pertinent provisions of the Administrative Code of 1987 and the Local Government Code of 1991. Both of these laws decree that recourse may be had to preventive suspension where the formal charge involves any of the following administrative offenses, or under the circumstances specified in paragraph (e) herein:
>
> a. Dishonesty;
>
> b. Oppression;
>
> c. Grave Misconduct;
>
> d. Neglect in the performance of duty; or
>
> e. If there are reasons to believe that the respondent is guilty of the charge/s, which would warrant his removal from the service.

CSC Resolution No. 030502 further enumerates the circumstances when a preventive suspension order is null and void on its face, *viz.*:

> i. The order was issued by one who is not authorized by law;
>
> ii. The order was not premised on any of the grounds or causes warranted by law;

---

[25] *Gonzales v. Gayta,* G.R. No. 143514, August 8, 2002, 387 SCRA 118, 126, citing *Hon. Gloria, supra* note 22.

iii. The order of suspension was without a formal charge; or

iv. While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

The formal charge against the respondent was for grave misconduct, an administrative offense that justifies the imposition of the preventive suspension of the respondent. *Gloria* has clarified that the preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty is authorized by the Civil Service Law, and cannot be considered unjustified even if the charges are ultimately dismissed so as to justify the payment of salaries to the employee concerned.[26] Moreover, backwages corresponding to the period of suspension of a civil service employee who is reinstated is proper only if he is found innocent of the charges *and* the suspension is declared to be unjustified.[27] Considering that the respondent's preventive suspension had legal basis, he was not entitled to backwages.

Anent the petitioner's insistence that the respondent did not exhaust his administrative remedies, Section 21 of the *Uniform Rules on Administrative Cases in the Civil Service* provides the option either of filing a motion for reconsideration against the preventive suspension order by the disciplining authority, or of elevating the preventive suspension order by appeal to the Civil Service Commission within 15 days from the receipt thereof.

We find and hold that the respondent was not strictly bound by the rule on exhaustion of administrative remedies. His failure to file the motion for reconsideration did not justify the immediate dismissal of the petition for *certiorari,* for we have recognized

---

[26] *Supra* note 22, at 762.

[27] *Civil Service Commission v. Rabang,* G.R. No. 167763, March 14, 2008, 548 SCRA 541, 548, citing *Bruguda v. Secretary of Education, Culture and Sports,* G.R. Nos. 142332-43, January 31, 2005, 450 SCRA 224, 231.

certain exceptional circumstances that excused his non-filing of the motion for reconsideration. Among the exceptional circumstances are the following, namely: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a Department Secretary whose acts, as an *alter ego* of the President, bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.[28]

Considering that the matter brought to the CA – whether the act complained against justified the filing of the formal charge for grave misconduct and the imposition of preventive suspension pending investigation —was a purely legal question due to the factual antecedents of the case not being in dispute. Hence, the respondent had no need to exhaust the available administrative remedy of filing the motion for reconsideration.

**WHEREFORE,** the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; **AFFIRMS** the assailed decision promulgated on April 29, 2004 and the resolution promulgated on September 6, 2004 insofar as the Court of Appeals dismissed the formal charge for grave misconduct against respondent Mario I. Molina, but **REVERSES** and **SETS**

---

[28] *Rubio, Jr. v. Paras,* G.R. No. 156047, April 12, 2005, 455 SCRA 697, 709-710.

**ASIDE** the decision and the resolution insofar as they nullified the respondent's preventive suspension and awarded backwages to him corresponding to the period of his preventive suspension; and **MAKES NO PRONOUNCEMENT** on costs of suit.

**SO ORDERED**.

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

---

**FIRST DIVISION**

[G.R. No. 167333. January 11, 2016]

**PEDRO LADINES**, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES** and **EDWIN DE RAMON**, *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* IN APPEAL BY *CERTIORARI,* ONLY QUESTIONS OF LAW MAY BE RAISED; QUESTION OF LAW, EXPLAINED.—** Section 1, Rule 45 of the *Rules of Court* explicitly provides that the petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts. In appeal by *certiorari*, therefore, only questions of law may be raised, because the Court, by virtue of its not being a trier of facts, does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.

**2. ID.; EVIDENCE; FACTUAL FINDINGS; THE RESOLUTION OF FACTUAL ISSUES IS THE FUNCTION OF THE LOWER COURTS WHOSE FINDINGS THEREON ARE RECEIVED WITH RESPECT AND ARE BINDING ON THE COURT; EXCEPTIONS.—** The resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Court subject to certain exceptions, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) 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; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusions.

**3. ID.; ID.; NEWLY-DISCOVERED EVIDENCE; THE CONCEPT OF NEWLY-DISCOVERED EVIDENCE IS APPLICABLE ONLY WHEN A LITIGANT SEEKS A NEW TRIAL OR THE RE-OPENING OF THE CASE IN THE TRIAL COURT.—** The *res gestae* statement of Licup did not constitute newly-discovered evidence that created a reasonable doubt as to the petitioner's guilt. We point out that the concept of newly-discovered evidence is applicable only when a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate on appeal, particularly one before the Court. The absence of a specific rule on the introduction of newly-discovered evidence at this late stage of the proceedings is not without reason. The Court would be compelled, despite its not being a trier of facts, to receive and consider the evidence for purposes of its appellate adjudication.

**4. ID.; ID.; ID.; REQUISITES TO RESTRICT THE CONCEPT OF THE NEWLY-DISCOVERED EVIDENCE, ENUMERATED.—** The Court has issued guidelines designed to balance the need of persons charged with crimes to afford to them the fullest opportunity to establish their defenses, on the one hand, and the public interest in ensuring a smooth, efficient and fair administration of criminal justice, on the other. The first guideline is to restrict the concept of newly-discovered evidence to only such evidence that can satisfy the following requisites, namely: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) the evidence is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.

**5. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; IMPOSABLE PENALTY.—** Homicide is punished with *reclusion temporal*. Taking the absence of any modifying circumstances into consideration, the RTC fixed the indeterminate penalty of 10 years and one day of *prision mayor*, as minimum, to 17 years and four months of the medium period of *reclusion temporal*, as maximum. The CA affirmed the penalty fixed by the RTC. We declare that the lower courts could not impose 17 years and four months of the medium period of *reclusion temporal*, which was the ceiling of the medium period of *reclusion temporal*, as the maximum of the indeterminate penalty without specifying the justification for so imposing. They thereby ignored that although Article 64 of the *Revised Penal Code*, which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, its seventh rule expressly demands that *"[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period

of *reclusion temporal,* which is 14 years, eight months and one day of *reclusion temporal.*

**6. ID.; ID.; ID.; CIVIL LIABILITY; MORAL DAMAGES AND CIVIL INDEMNITY ARE ALWAYS GRANTED IN HOMICIDE; CASE AT BAR.—** Moral damages and civil indemnity are always granted in homicide, it being assumed by the law that the loss of human life absolutely brings moral and spiritual losses as well as a definite loss. Moral damages and civil indemnity require neither pleading nor evidence simply because death through crime always occasions moral sufferings on the part of the victim's heirs. x x x The civil indemnity and moral damages are fixed at ₱75,000.00 each because homicide was a gross crime.

**7. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; WHEN ACTUAL DAMAGES FOR BURIAL AND RELATED EXPENSES ARE NOT SUBSTANTIATED WITH RECEIPTS, TEMPERATE DAMAGES ARE WARRANTED; CASE AT BAR.—** Article 2224 of the *Civil Code* authorizes temperate damages to be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. There is no longer any doubt that when actual damages for burial and related expenses are not substantiated with receipts, temperate damages of at least ₱25,000.00 are warranted, for it is certainly unfair to deny to the surviving heirs of the victim the compensation for such expenses as actual damages. This pronouncement proceeds from the sound reasoning that it would be anomalous that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 would only be put in a worse situation than others who might have presented no receipts at all but would still be entitled to ₱25,000.00 as temperate damages. In addition, in line with recent jurisprudence, all the items of civil liability shall earn interest of 6% *per annum* computed from the date of the finality of this judgment until the items are fully paid.

**APPEARANCES OF COUNSEL**

*Gil S. Gojol* for petitioner.
*The Solicitor General* for public respondent.

## D E C I S I O N

**BERSAMIN, *J.*:**

To impose the highest within a period of the imposable penalty without specifying the justification for doing so is an error on the part of the trial court that should be corrected on appeal. In default of such justification, the penalty to be imposed is the lowest of the period.

### The Case

The petitioner appeals the decision promulgated on October 22, 2004,[1] whereby the Court of Appeals (CA) affirmed his conviction for homicide by the Regional Trial Court (RTC), Branch 53, in Sorsogon City under the judgment rendered on February 10, 2003.[2]

### Antecedents

On August 12, 1993, an information was filed in the RTC charging the petitioner and one Herman Licup with homicide, allegedly committed as follows:

> That on or about the 12th day of June 1993, in the Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating, and mutually helping one another, armed with bladed weapons did then and there, willfully, unlawfully and feloniously, attack, assault and stab one Erwin de Ramon, thereby inflicting upon him serious and mortal wounds which resulted to his instantaneous death, to the damage and prejudice of his legal heirs.
>
> CONTRARY TO LAW.[3]

---

[1] *Rollo,* pp. 56-65; penned by Associate Justice Eugenio S. Labitoria (retired), concurred in by Associate Justice Rebecca De Guia-Salvador (retired) and Associate Justice Rosalinda Asuncion-Vicente (retired).

[2] *Id.* at 30-36.

[3] *Id.* at 57.

The factual background of the charge follows.

While Prosecution witnesses Philip de Ramon and Mario Lasala, along with victim Erwin de Ramon (Erwin), were watching the dance held during the June 12, 1993 Grand Alumni Homecoming of the Bulabog Elementary School in Sorsogon, Sorsogon, the petitioner and Licup appeared and passed by them. The petitioner suddenly and without warning approached and stabbed Erwin below the navel with a machete. The petitioner then left after delivering the blow. At that juncture, Licup also mounted his attack against Erwin but the latter evaded the blow by stepping back. Erwin pulled out the machete from his body and wielded it against Licup, whom he hit in the chest. Licup pursued but could not catch up with Erwin because they both eventually fell down. Erwin was rushed to the hospital where he succumbed.[4]

Dr. Myrna Listanco, who performed the post-mortem examination on the cadaver of Erwin, attested that the victim had sustained two stab wounds on the body, one in the chest and the other in the abdomen. She opined that one or two assailants had probably inflicted the injuries with the use of two distinct weapons; and that the chest wound could have been caused by a sharp instrument, like a sharpened screwdriver, while the abdominal injury could have been from a sharp bladed instrument like a knife.[5]

In his defense, the petitioner tendered alibi and denial. He recounted that at the time in question, he was in the Bulabog Elementary School compound along with his wife and their minor child; that they did not enter the dance hall because there was trouble that had caused the people to scamper; that they had then gone home; that he had learned about the stabbing incident involving Erwin on their way home from Barangay Tanod Virgilio de Ramon who informed him that Licup and Erwin had stabbed each other; and that Prosecution witnesses Philip and Lasala harbored ill- will towards him by reason of

---

[4] *Id.* at 58.

[5] *Id.* at 58-59.

his having lodged a complaint in the barangay against them for stealing coconuts from his property.

The petitioner presented Angeles Jasareno and Arnulfo Palencia to corroborate his denial. Jasareno and Palencia testified that at the time in question they were in the Bulabog Elementary School, together with the petitioner, the latter's wife and their minor daughter; that while they were watching the dance, a quarrel had transpired but they did not know who had been involved; that they had remained in the dance hall with the petitioner and his family during the quarrel; and that it was impossible for the petitioner to be have stabbed Erwin. Palencia added that after the dance he and the petitioner and the latter's wife and child had gone home together.[6]

**Judgment of the RTC**

On February 10, 2003, the RTC pronounced the petitioner guilty as charged, decreeing:

> WHEREFORE, premises considered, the Court finds accused Pedro Ladines guilty beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, sans any mitigating circumstances and applying the Indeterminate Sentence Law, accused Pedro Ladines is hereby sentenced to suffer an imprisonment of from Ten (10) years and One (1) day of prision mayor as minimum to 17 years and 4 months of reclusion temporal as maximum and to pay the sum of ₱50,000.00 as civil indemnity without subsidiary imprisonment [in] case of insolvency and [to] pay the costs.
>
> Meanwhile, accused Herman Licup is acquitted of the offense charge[d] for insufficiency of evidence. The bond posted for his liberty is cancelled and discharged.
>
> SO ORDERED.[7]

**Decision of the CA**

The petitioner appealed, contending that:

---

[6] *Id.* at 59-61.

[7] *Id.* at 30-36.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF HOMICIDE DESPITE THE PRESENCE OF A REASONABLE DOUBT IN LIGHT OF THE DECLARATION OF THE PROSECUTION WITNESS THAT ACCUSED HERMAN LICUP WHO WAS ALSO INJURED DURING THE INCIDENT HAD ATTACKED THE VICTIM ERWIN DE RAMON.[8]

As stated, the CA affirmed the conviction, decreeing:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit and the appealed Decision dated 10 December 2003 of the Regional Trial Court Branch 53, Sorsogon City, Sorsogon in Criminal Case No. 93-3400 finding appellant guilty of Homicide is hereby AFFIRMED. Costs against appellant.

SO ORDERED.[9]

**Issues**

Hence, this appeal, with the petitioner insisting that the CA committed reversible error in affirming his conviction despite the admission of Licup immediately after the incident that he had stabbed the victim; and that the *res gestae* statement of Licup constituted newly-discovered evidence that created a reasonable doubt as to the petitioner's guilt.[10]

The State countered[11] that the insistence by Ladines raised factual questions that were improper for consideration in an appeal by petition for review on *certiorari* under Rule 45; that the CA did not err in affirming the conviction; and that the evidence to be adduced by the petitioner was not in the nature of newly-discovered evidence.

**Ruling of the Court**

The appeal is without merit.

---

[8] *CA rollo,* p. 47.

[9] *Rollo,* p. 65.

[10] *Id.* at 16.

[11] *Id.* at 83-102.

First of all, Section 1, Rule 45 of the *Rules of Court* explicitly provides that the petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[12] In appeal by *certiorari,* therefore, only questions of law may be raised, because the Court, by virtue of its not being a trier of facts, does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.

The resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Court subject to certain exceptions, including: *(a)* when the findings are grounded entirely on speculation, surmises or conjectures; *(b)* when the inference made is manifestly mistaken, absurd or impossible; (*c*) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; *(f)* when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; *(h)* when the findings are conclusions without citation of specific evidence on which they are based; (*i*) 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; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and *(k)* when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13]

---

[12] *Angeles v. Pascual,* G.R. No. 157150, September 21, 2011, 658 SCRA 23, 28-29.

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

There is no question that none of the foregoing exceptions applies in order to warrant the review of the unanimous factual findings of the RTC and the CA. Hence, the Court upholds the CA's affirmance of the conviction of the petitioner.

Secondly, the *res gestae* statement of Licup did not constitute newly- discovered evidence that created a reasonable doubt as to the petitioner's guilt. We point out that the concept of newly-discovered evidence is applicable only when a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate on appeal, particularly one before the Court. The absence of a specific rule on the introduction of newly-discovered evidence at this late stage of the proceedings is not without reason. The Court would be compelled, despite its not being a trier of facts, to receive and consider the evidence for purposes of its appellate adjudication.

Of necessity, the Court would remand the case to the lower courts for that purpose. But the propriety of remanding for the purpose of enabling the lower court to receive the newly-discovered evidence would inflict some degree of inefficiency on the administration of justice, because doing so would effectively undo or reopen the decision that is already on appeal.[14] That is a result that is not desirable. Hence, the Court has issued guidelines designed to balance the need of persons charged with crimes to afford to them the fullest opportunity to establish their defenses, on the one hand, and the public interest in ensuring a smooth, efficient and fair administration of criminal justice, on the other. The first guideline is to restrict the concept of newly-discovered evidence to only such evidence that can satisfy the following requisites, namely: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) the evidence is material, not merely

---

[14] *Luzon Hydro Corporation v. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013, 709 SCRA 462, 476.

cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.[15]

We agree with the State that the proposed evidence of the petitioner was not newly-discovered because the first two requisites were not present. The petitioner, by his exercise of reasonable diligence, could have sooner discovered and easily produced the proposed evidence during the trial by obtaining a certified copy of the police blotter that contained the alleged *res gestae* declaration of Licup and the relevant documents and testimonies of other key witnesses to substantiate his denial of criminal responsibility.

Thirdly, homicide is punished with *reclusion temporal.*[16] Taking the absence of any modifying circumstances into consideration, the RTC fixed the indeterminate penalty of 10 years and one day of *prision mayor,* as minimum, to 17 years and four months of the medium period of *reclusion temporal,* as maximum. The CA affirmed the penalty fixed by the RTC.

We declare that the lower courts could not impose 17 years and four months of the medium period of *reclusion temporal,* which was the ceiling of the medium period of *reclusion temporal,* as the maximum of the indeterminate penalty without specifying the justification for so imposing. They thereby ignored that although Article 64 of the *Revised Penal Code,* which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, its seventh rule expressly demands that *"[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime."* By not specifying the justification for imposing

---

[15] *Custodio v. Sandiganbayan,* G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 33.

[16] Article 249, *Revised Penal Code.*

the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious. In the absence of the specification, the maximum of the indeterminate sentence for the petitioner should be the lowest of the medium period of *reclusion temporal,* which is 14 years, eight months and one day of *reclusion temporal.*

Lastly, the lower courts limited the civil liability to civil indemnity of ₱50,000.00. The limitation was a plain error that we must correct. Moral damages and civil indemnity are always granted in homicide, it being assumed by the law that the loss of human life absolutely brings moral and spiritual losses as well as a definite loss. Moral damages and civil indemnity require neither pleading nor evidence simply because death through crime always occasions moral sufferings on the part of the victim's heirs.[17] As the Court said in *People v. Panado*:[18]

> x x x a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.

The civil indemnity and moral damages are fixed at ₱75,000.00 each because homicide was a gross crime.

Considering that the decisions of the lower courts contained no treatment of the actual damages, the Court is in no position to dwell on this. The lack of such treatment notwithstanding, the Court holds that temperate damages of ₱25,000.00 should be allowed to the heirs of the victim. Article 2224 of the *Civil*

---

[17] *People v. Osianas,* G.R. No. 182548, September 30, 2008, 567 SCRA 319, 339-340: *People v. Buduhan,* G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Berondo, Jr.,* G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554-555.

[18] *People v. Panado,* G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

*Code* authorizes temperate damages to be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. There is no longer any doubt that when actual damages for burial and related expenses are not substantiated with receipts, temperate damages of at least ₱25,000.00 are warranted, for it is certainly unfair to deny to the surviving heirs of the victim the compensation for such expenses as actual damages.[19] This pronouncement proceeds from the sound reasoning that it would be anomalous that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 would only be put in a worse situation than others who might have presented no receipts at all but would still be entitled to ₱25,000.00 as temperate damages.[20] In addition, in line with recent jurisprudence,[21] all the items of civil liability shall earn interest of 6% *per annum* computed from the date of the finality of this judgment until the items are fully paid.

**WHEREFORE,** the Court **AFFIRMS** the decision promulgated on October 22, 2004 subject to the **MODIFICATION** that: *(a)* the **INDETERMINATE SENTENCE** of petitioner **PEDRO LADINES** is 10 years and one day of *prision mayor,* as minimum, to 14 years, eight months and one day of the medium period of *reclusion temporal,* as maximum; and *(b)* the petitioner shall pay to the heirs of the victim Erwin de Ramon: (1) civil indemnity and moral damages of ₱75,000.00 each; (2) temperate damages of ₱25,000.00; (*c*) interest of 6% *per annum* on all items of the civil liability computed from the date of the finality of this judgment until they are fully paid; and (*d*) the costs of suit.

**SO ORDERED.**

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

---

[19] *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804-805.

[20] *Id*.

[21] *Sison v. People,* G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

**SECOND DIVISION**

[G.R. No. 167615. January 11, 2016]

**SPOUSES ALEXANDER AND JULIE LAM, Doing Business Under the Name and Style "COLORKWIK LABORATORIES" and "COLORKWIK PHOTO SUPPLY",** *petitioners, vs.* **KODAK PHILIPPINES, LTD.,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; CIVIL CODE; OBLIGATIONS; THE INDIVISIBILITY OF AN OBLIGATION IS TESTED AGAINST WHETHER IT CAN BE THE SUBJECT OF PARTIAL PERFORMANCE; APPLICATION IN CASE AT BAR.—** In *Nazareno v. Court of Appeals,* the indivisibility of an obligation is tested against whether it can be the subject of partial performance: *An obligation is indivisible when it cannot be validly performed in parts, whatever may be the nature of the thing which is the object thereof. The indivisibility refers to the prestation and not to the object thereof.* x x x There is no indication in the Letter Agreement that the units petitioners ordered were covered by three (3) separate transactions. The factors considered by the Court of Appeals are mere incidents of the execution of the obligation, which is to deliver three units of the Minilab Equipment on the part of respondent and payment for all three on the part of petitioners. The intention to create an indivisible contract is apparent from the benefits that the Letter Agreement afforded to both parties. Petitioners were given the 19% discount on account of a multiple order, with the discount being equally applicable to all units that they sought to acquire. The provision on "no downpayment" was also applicable to all units. Respondent, in turn, was entitled to payment of all three Minilab Equipment units, payable by installments.

**2. ID.; ID.; CONTRACTS; SALES; A CONTRACT OF SALE IS PERFECTED UPON THE MEETING OF THE MINDS AS TO THE OBJECT AND THE PRICE.—** The contract between the parties is one of sale, where one party obligates himself or herself to transfer the ownership and deliver a

determinate thing, while the other pays a certain price in money or its equivalent. A contract of sale is perfected upon the meeting of minds as to the object and the price, and the parties may reciprocally demand the performance of their respective obligations from that point on.

**3. ID.; ID.; OBLIGATIONS; RESCISSION; RESCISSION HAS THE EFFECT OF MUTUAL RESTITUTION; EXPLAINED.—** Rescission under Article 1191 has the effect of mutual restitution. In *Velarde v. Court of Appeals*: x x x When rescission is sought under Article 1191 of the Civil Code, it need not be judicially invoked because the power to resolve is implied in reciprocal obligations. The right to resolve allows an injured party to minimize the damages he or she may suffer on account of the other party's failure to perform what is incumbent upon him or her. When a party fails to comply with his or her obligation, the other party's right to resolve the contract is triggered. The resolution immediately produces legal effects if the non-performing party does not question the resolution. Court intervention only becomes necessary when the party who allegedly failed to comply with his or her obligation disputes the resolution of the contract. Since both parties in this case have exercised their right to resolve under Article 1191, there is no need for a judicial decree before the resolution produces effects.

**4. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE REVIEW PERTAINS ONLY TO QUESTIONS OF LAW.—** A petition for review on *certiorari* under Rule 45 shall only pertain to questions of law. It is not the duty of this court to re-evaluate the evidence adduced before the lower courts. Furthermore, unless the petition clearly shows that there is grave abuse of discretion, the findings of fact of the trial court as affirmed by the Court of Appeals are conclusive upon this court.

**5. CIVIL LAW; CIVIL CODE; DAMAGES; MORAL AND EXEMPLARY DAMAGES; WHEN GRANT THEREOF PROPER; APPLICATION IN CASE AT BAR.—** The award for moral and exemplary damages also appears to be sufficient. Moral damages are granted to alleviate the moral suffering suffered by a party due to an act of another, but it is not intended to enrich the victim at the defendant's expense. It is not meant to punish the culpable party and, therefore, must always be

reasonable vis-a-vis the injury caused. Exemplary damages, on the other hand, are awarded when the injurious act is attended by bad faith. In this case, respondent was found to have misrepresented its right over the generator set that was seized. As such, it is properly liable for exemplary damages as an example to the public. x x x Based on the amount awarded for moral and exemplary damages, it is reasonable to award petitioners ₱20,000.00 as attorney's fees.

**APPEARANCES OF COUNSEL**

*Tan Acut Lopez & Pison* for petitioners.
*Nicanor N. Lonzame & Associates* for respondent.

**D E C I S I O N**

**LEONEN, *J.*:**

This is a Petition for Review on Certiorari filed on April 20, 2005 assailing the March 30, 2005 Decision[1] and September 9, 2005 Amended Decision[2] of the Court of Appeals, which modified the February 26, 1999 Decision[3] of the Regional Trial Court by reducing the amount of damages awarded to petitioners Spouses Alexander and Julie Lam (Lam Spouses).[4] The Lam Spouses argue that respondent Kodak Philippines, Ltd.'s breach of their contract of sale entitles them to damages more than the amount awarded by the Court of Appeals.[5]

I

On January 8, 1992, the Lam Spouses and Kodak Philippines, Ltd. entered into an agreement (Letter Agreement) for the sale

---

[1] *Rollo*, pp. 58-75. The case, docketed as CA-G.R. No. CV-64158, was entitled *Kodak Philippines, Ltd. v. Spouses Alexander and Julie Lam*.

[2] *Id*. at 423.

[3] *Id*. at 76-79. The Decision was penned by Judge Salvador S. Abad Santos of Branch 65 of the Regional Trial Court, Makati City.

[4] *Id*. at 74-75.

[5] *Id*. at 462, 468, 469, and 472-473.

of three (3) units of the Kodak Minilab System 22XL[6] (Minilab Equipment) in the amount of ₱1,796,000.00 per unit,[7] with the following terms:

> This confirms our verbal agreement for Kodak Phils., Ltd. to provide Colorkwik Laboratories, Inc. with three (3) units Kodak Minilab System 22XL . . . for your proposed outlets in Rizal Avenue (Manila), Tagum (Davao del Norte), and your existing Multicolor photo counter in Cotabato City under the following terms and conditions:
>
> 1. Said Minilab Equipment packages will avail a total of 19% multiple order discount based on prevailing equipment price provided said equipment packages will be purchased not later than June 30, 1992.
>
> 2. 19% Multiple Order Discount shall be applied in the form of merchandise and delivered in advance immediately after signing of the contract.
> * Also includes start-up packages worth ₱61,000.00.
>
> 3. NO DOWNPAYMENT.
>
> 4. Minilab Equipment Package shall be payable in 48 monthly installments at THIRTY FIVE THOUSAND PESOS (₱35,000.00) inclusive of 24% interest rate for the first 12 months; the balance shall be re-amortized for the remaining 36 months and the prevailing interest shall be applied.
>
> 5. Prevailing price of Kodak Minilab System 22XL as of January 8, 1992 is at ONE MILLION SEVEN HUNDRED NINETY SIX THOUSAND PESOS.
>
> 6. Price is subject to change without prior notice.
> *Secured with PDCs; 1st monthly amortization due 45 days after installation[.][8]

On January 15, 1992, Kodak Philippines, Ltd. delivered one (1) unit of the Minilab Equipment in Tagum, Davao Province.[9]

---

[6] *Id*. at 76. The Kodak Minilab System 22XL is a Noritsu QSS 1501 with 430-2 Film Processor (non plumbed) with standard accessories.

[7] *Id*. at 76.

[8] *Id*. at 94.

[9] *Id*. at 76.

The delivered unit was installed by Noritsu representatives on March 9, 1992.[10] The Lam Spouses issued postdated checks amounting to ₱35,000.00 each for 12 months as payment for the first delivered unit, with the first check due on March 31, 1992.[11]

The Lam Spouses requested that Kodak Philippines, Ltd. not negotiate the check dated March 31, 1992 allegedly due to insufficiency of funds.[12] The same request was made for the check due on April 30, 1992. However, both checks were negotiated by Kodak Philippines, Ltd. and were honored by the depository bank.[13] The 10 other checks were subsequently dishonored after the Lam Spouses ordered the depository bank to stop payment.[14]

Kodak Philippines, Ltd. canceled the sale and demanded that the Lam Spouses return the unit it delivered together with its accessories.[15] The Lam Spouses ignored the demand but also rescinded the contract through the letter dated November 18, 1992 on account of Kodak Philippines, Ltd.'s failure to deliver the two (2) remaining Minilab Equipment units.[16]

On November 25, 1992, Kodak Philippines, Ltd. filed a Complaint for replevin and/or recovery of sum of money. The case was raffled to Branch 61 of the Regional Trial Court, Makati City.[17] The Summons and a copy of Kodak

---

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 106. In the letter dated October 14, 2002, Kodak Philippines, Ltd., through counsel, demanded from the Lam Spouses the surrender of possession of the delivered unit of the Minilab Equipment and its accessories. The letter stated that failure to comply will prompt Kodak Philippines, Ltd. to file a case for recovery of possession.

[16] *Id*. at 68.

[17] *Id*. In the Lam Spouses' Petition for Review, the checks were issued in favor of Kodak Philippines, Ltd. on March 9, 1992, the same day the first

Philippines, Ltd.'s Complaint was personally served on the Lam Spouses.[18]

The Lam Spouses failed to appear during the pre-trial conference and submit their pre-trial brief despite being given extensions.[19] Thus, on July 30, 1993, they were declared in default.[20] Kodak Philippines, Ltd. presented evidence ex-parte.[21] The trial court issued the Decision in favor of Kodak Philippines, Ltd. ordering the seizure of the Minilab Equipment, which included the lone delivered unit, its standard accessories, and a separate generator set.[22] Based on this Decision, Kodak Philippines, Ltd. was able to obtain a writ of seizure on December 16, 1992 for the Minilab Equipment installed at the Lam Spouses' outlet in Tagum, Davao Province.[23] The writ was enforced on December 21, 1992, and Kodak Philippines, Ltd. gained possession of the Minilab Equipment unit, accessories, and the generator set.[24]

The Lam Spouses then filed before the Court of Appeals a Petition to Set Aside the Orders issued by the trial court dated July 30, 1993 and August 13, 1993. These Orders were subsequently set aside by the Court of Appeals Ninth Division, and the case was remanded to the trial court for pre-trial.[25]

On September 12, 1995, an Urgent Motion for Inhibition was filed against Judge Fernando V. Gorospe, Jr.,[26] who had

---

unit was delivered, in accordance with the Letter Agreement which provided that the first check would be due 45 days after the installation of the system (*Id*. at 13).

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

[19] *Id*. at 76.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 439.

[24] *Id*. at 76.

[25] *Id*.

[26] *Id*. at 77.

issued the writ of seizure.[27] The ground for the motion for inhibition was not provided. Nevertheless, Judge Fernando V. Gorospe Jr. inhibited himself, and the case was reassigned to Branch 65 of the Regional Trial Court, Makati City on October 3, 1995.[28]

In the Decision dated February 26, 1999, the Regional Trial Court found that Kodak Philippines, Ltd. defaulted in the performance of its obligation under its Letter Agreement with the Lam Spouses.[29] It held that Kodak Philippines, Ltd.'s failure to deliver two (2) out of the three (3) units of the Minilab Equipment caused the Lam Spouses to stop paying for the rest of the installments.[30] The trial court noted that while the Letter Agreement did not specify a period within which the delivery of all units was to be made, the Civil Code provides "reasonable time" as the standard period for compliance:

> The second paragraph of Article 1521 of the Civil Code provides:
>
> > Where by a contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
>
> What constitutes reasonable time is dependent on the circumstances availing both on the part of the seller and the buyer. In this case, delivery of the first unit was made five (5) days after the date of the agreement. Delivery of the other two (2) units, however, was never made despite the lapse of at least three (3) months.[31]

Kodak Philippines, Ltd. failed to give a sufficient explanation for its failure to deliver all three (3) purchased units within a reasonable time.[32]

---

[27] *Id*. at 113.

[28] *Id*. at 77.

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*. at 77-78.

The trial court found:

Kodak would have the court believe that it did not deliver the other two (2) units due to the failure of defendants to make good the installments subsequent to the second. The court is not convinced. First of all, there should have been simultaneous delivery on account of the circumstances surrounding the transaction. . . . Even after the first delivery . . . no delivery was made despite repeated demands from the defendants and despite the fact no installments were due. Then in March and in April (three and four months respectively from the date of the agreement and the first delivery) when the installments due were both honored, still no delivery was made.

Second, although it might be said that Kodak was testing the waters with just one delivery - determining first defendants' capacity to pay - it was not at liberty to do so. It is implicit in the letter agreement that delivery within a reasonable time was of the essence and failure to so deliver within a reasonable time and despite demand would render the vendor in default.

. . . .

Third, at least two (2) checks were honored. If indeed Kodak refused delivery on account of defendants' inability to pay, non-delivery during the two (2) months that payments were honored is unjustified.[33]

Nevertheless, the trial court also ruled that when the Lam Spouses accepted delivery of the first unit, they became liable for the fair value of the goods received:

On the other hand, defendants accepted delivery of one (1) unit. Under Article 1522 of the Civil Code, in the event the buyer accepts incomplete delivery and uses the goods so delivered, not then knowing that there would not be any further delivery by the seller, the buyer shall be liable only for the fair value to him of the goods received. In other words, the buyer is still liable for the value of the property received. Defendants were under obligation to pay the amount of the unit. Failure of delivery of the other units did not thereby give unto them the right to suspend payment on the unit delivered. Indeed, in incomplete deliveries, the buyer has the remedy of refusing payment unless delivery is first made. In this case though, payment for the

---

[33] *Id*.

two undelivered units have not even commenced; the installments made were for only one (1) unit. Hence, Kodak is right to retrieve the unit delivered.[34]

The Lam Spouses were under obligation to pay for the amount of one unit, and the failure to deliver the remaining units did not give them the right to suspend payment for the unit already delivered.[35] However, the trial court held that since Kodak Philippines, Ltd. had elected to cancel the sale and retrieve the delivered unit, it could no longer seek payment for any deterioration that the unit may have suffered while under the custody of the Lam Spouses.[36]

As to the generator set, the trial court ruled that Kodak Philippines, Ltd. attempted to mislead the court by claiming that it had delivered the generator set with its accessories to the Lam Spouses, when the evidence showed that the Lam Spouses had purchased it from Davao Ken Trading, not from Kodak Philippines, Ltd.[37] Thus, the generator set that Kodak

---

[34] *Id*. at 78. CIVIL CODE, Art. 1522: "Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest.

In the preceding two paragraphs, if the subject matter is indivisible, the buyer may reject the whole of the goods.

The provisions of this article are subject to any usage of trade, special agreement, or course of dealing between the parties. (n)"

[35] *Id*.

[36] *Id.*

[37] *Id*. at 80.

Philippines, Ltd. wrongfully took from the Lam Spouses should be replaced.[38]

The dispositive portion of the Regional Trial Court Decision reads:

> PREMISES CONSIDERED, the case is hereby dismissed. Plaintiff is ordered to pay the following:
>
> 1) PHP 130,000.00 representing the amount of the generator set, plus legal interest at 12% per annum from December 1992 until fully paid; and
>
> 2) PHP 1,300,000.00 as actual expenses in the renovation of the Tagum, Davao and Rizal Ave., Manila outlets.
>
> SO ORDERED.[39]

On March 31, 1999, the Lam Spouses filed their Notice of Partial Appeal, raising as an issue the Regional Trial Court's failure to order Kodak Philippines, Ltd. to pay: (1) ₱2,040,000 in actual damages; (2) ₱50,000,000 in moral damages; (3) ₱20,000,000 in exemplary damages; (4) ₱353,000 in attorney's fees; and (5) ₱300,000 as litigation expenses.[40] The Lam Spouses did not appeal the Regional Trial Court's award for the generator set and the renovation expenses.[41]

Kodak Philippines, Ltd. also filed an appeal. However, the Court of Appeals[42] dismissed it on December 16, 2002 for Kodak Philippines, Ltd.'s failure to file its appellant's brief, without prejudice to the continuation of the Lam Spouses' appeal.[43] The Court of Appeals' December 16, 2002 Resolution denying

---

[38] *Id*.

[39] *Id*.

[40] *Id*. at 23.

[41] *Id*.

[42] *Id*. at 129. The Resolution was penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Eliezer R. De Los Santos and Regalado E. Maambong of the Thirteenth Division, Court of Appeals Manila.

[43] *Id*.

Kodak Philippines, Ltd.'s appeal became final and executory on January 4, 2003.[44]

In the Decision[45] dated March 30, 2005, the Court of Appeals Special Fourteenth Division modified the February 26, 1999 Decision of the Regional Trial Court:

> **WHEREFORE, PREMISES CONSIDERED,** the Assailed Decision dated 26 February 1999 of the Regional Trial Court, Branch 65 in Civil Case No. 92-3442 is hereby **MODIFIED**. Plaintiff-appellant is ordered to pay the following:
>
> 1. ₱130,000.00 representing the amount of the generator set, plus legal interest at 12% per annum from December 1992 until fully paid; and
>
> 2. *₱440,000.00 as actual damages;*
>
> 3. *₱25,000.00 as moral damages; and*
>
> 4. *₱50,000.00 as exemplary damages.*
>
> **SO ORDERED.**[46] (Emphasis supplied)

The Court of Appeals agreed with the trial court's Decision, but extensively discussed the basis for the modification of the dispositive portion.

The Court of Appeals ruled that the Letter Agreement executed by the parties showed that their obligations were susceptible of partial performance. Under Article 1225 of the New Civil Code, their obligations are divisible:

> In determining the divisibility of an obligation, the following factors may be considered, to wit: (1) the will or intention of the parties, which may be expressed or presumed; (2) the objective or purpose

---

[44] *Id*. at 130. A Partial Entry of Judgment was issued by the Court of Appeals on January 4, 2003.

[45] *Id*. at 58-75. The Decision was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin (now an Associate Justice of this court) and Rosalinda Asuncion-Vicente of the Special Fourteenth Division, Court of Appeals Manila.

[46] *Id*. at 74-75.

of the stipulated prestation; (3) the nature of the thing; and (4) provisions of law affecting the prestation.

Applying the foregoing factors to this case, *We found that the intention of the parties is to be bound separately for each Minilab Equipment to be delivered as shown by the separate purchase price for each of the item, by the acceptance of Sps. Lam of separate deliveries for the first Minilab Equipment and for those of the remaining two and the separate payment arrangements for each of the equipment*. Under this premise, Sps. Lam shall be liable for the entire amount of the purchase price of the Minilab Equipment delivered considering that Kodak had already completely fulfilled its obligation to deliver the same. . . .

Third, it is also evident that the *contract is one that is severable in character as demonstrated by the separate purchase price for each of the minilab equipment.* "If the part to be performed by one party consists in several distinct and separate items and the price is apportioned to each of them, the contract will generally be held to be severable. In such case, each distinct stipulation relating to a separate subject matter will be treated as a separate contract." *Considering this, Kodak's breach of its obligation to deliver the other two (2) equipment cannot bar its recovery for the full payment of the equipment already delivered. As far as Kodak is concerned, it had already fully complied with its separable obligation to deliver the first unit of Minilab Equipment.*[47] (Emphasis supplied)

The Court of Appeals held that the issuance of a writ of replevin is proper insofar as the delivered Minilab Equipment unit and its standard accessories are concerned, since Kodak Philippines, Ltd. had the right to possess it:[48]

The purchase price of said equipment is ₱1,796,000.00 which, under the agreement is payable with forty eight (48) monthly amortization. It is undisputed that Sps. Lam made payments which amounted to Two Hundred Seventy Thousand Pesos (₱270,000.00) through the following checks: Metrobank Check Nos. 00892620 and

---

[47] *Id*. at 66-67, *citing* 4 ARTURO TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, 255-257 (1995 ed.).

[48] *Id*. at 64.

00892621 dated 31 March 1992 and 30 April 1992 respectively in the amount of Thirty Five Thousand Pesos (₱35,000.00) each, and BPI Family Check dated 31 July 1992 amounting to Two Hundred Thousand Pesos (₱200,000.00). This being the case, Sps. Lam are still liable to Kodak in the amount of One Million Five Hundred Twenty Six Thousand Pesos (₱1,526,000.00), which is payable in several monthly amortization, pursuant to the Letter Agreement. *However, Sps. Lam admitted that sometime in May 1992, they had already ordered their drawee bank to stop the payment on all the other checks they had issued to Kodak as payment for the Minilab Equipment delivered to them. Clearly then, Kodak ha[d] the right to repossess the said equipment, through this replevin suit. Sps. Lam cannot excuse themselves from paying in full the purchase price of the equipment delivered to them on account of Kodak's breach of the contract to deliver the other two (2) Minilab Equipment, as contemplated in the Letter Agreement.*[49] (Emphasis supplied)

Echoing the ruling of the trial court, the Court of Appeals held that the liability of the Lam Spouses to pay the remaining balance for the first delivered unit is based on the second sentence of Article 1592 of the New Civil Code.[50] The Lam Spouses' receipt and use of the Minilab Equipment before they knew that Kodak Philippines, Ltd. would not deliver the two (2) remaining units has made them liable for the unpaid portion of the purchase price.[51]

The Court of Appeals noted that Kodak Philippines, Ltd. sought the rescission of its contract with the Lam Spouses in the letter dated October 14, 1992.[52] The rescission was based on Article 1191 of the New Civil Code, which provides: "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."[53] In its letter, Kodak Philippines, Ltd.

---

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

[50] *Id*. at 65.

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

[52] *Id*. at 68.

[53] *Id*.

demanded that the Lam Spouses surrender the lone delivered unit of Minilab Equipment along with its standard accessories.[54]

The Court of Appeals likewise noted that the Lam Spouses rescinded the contract through its letter dated November 18, 1992 on account of Kodak Philippines, Inc.'s breach of the parties' agreement to deliver the two (2) remaining units.[55]

As a result of this rescission under Article 1191, the Court of Appeals ruled that "both parties must be restored to their original situation, as far as practicable, as if the contract was never entered into."[56] The Court of Appeals ratiocinated that Article 1191 had the effect of extinguishing the obligatory relation as if one was never created:[57]

> To rescind is to declare a contract void in its inception and to put an end to it as though it never were. It is not merely to terminate it and to release parties from further obligations to each other but abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract been made.[58]

The Lam Spouses were ordered to relinquish possession of the Minilab Equipment unit and its standard accessories, while Kodak Philippines, Ltd. was ordered to return the amount of ₱270,000.00, tendered by the Lam Spouses as partial payment.[59]

As to the actual damages sought by the parties, the Court of Appeals found that the Lam Spouses were able to substantiate the following:

> Incentive fee paid to Mr. Ruales in the amount of ₱100,000.00; the rider to the contract of lease which made the Sps. Lam liable, by way of advance payment, in the amount of ₱40,000.00, the same being intended for the repair of the flooring of the leased premises;

---

[54] *Id*.

[55] *Id*.

[56] *Id*. at 69.

[57] *Id*. at 68.

[58] *Id*. at 69.

[59] *Id*.

and lastly, the payment of ₱300,000.00, as compromise agreement for the pre-termination of the contract of lease with Ruales.[60]

The total amount is ₱440,000.00. The Court of Appeals found that all other claims made by the Lam Spouses were not supported by evidence, either through official receipts or check payments.[61]

As regards the generator set improperly seized from Kodak Philippines, Ltd. on the basis of the writ of replevin, the Court of Appeals found that there was no basis for the Lam Spouses' claim for reasonable rental of ₱5,000.00. It held that the trial court's award of 12% interest, in addition to the cost of the generator set in the amount of ₱130,000.00, is sufficient compensation for whatever damage the Lam Spouses suffered on account of its improper seizure.[62]

The Court of Appeals also ruled on the Lam Spouses' entitlement to moral and exemplary damages, as well as attorney's fees and litigation expenses:

> In seeking recovery of the Minilab Equipment, Kodak cannot be considered to have manifested bad faith and malevolence because as earlier ruled upon, it was well within its right to do the same. However, with respect to the seizure of the generator set, where Kodak misrepresented to the court *a quo* its alleged right over the said item, Kodak's bad faith and abuse of judicial processes become self-evident. Considering the off-setting circumstances attendant, the amount of ₱25,000.00 by way of moral damages is considered sufficient.
>
> In addition, so as to serve as an example to the public that an application for replevin should not be accompanied by any false claims and misrepresentation, the amount of ₱50,000.00 by way of exemplary damages should be pegged against Kodak.
>
> With respect to the attorney's fees and litigation expenses, We find that there is no basis to award Sps. Lam the amount sought for.[63]

---

[60] *Id*. at 71.

[61] *Id*. at 71-72.

[62] *Id*. at 73.

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

Kodak Philippines, Ltd. moved for reconsideration of the Court of Appeals Decision, but it was denied for lack of merit.[64] However, the Court of Appeals noted that the Lam Spouses' Opposition correctly pointed out that the additional award of ₱270,000.00 made by the trial court was not mentioned in the decretal portion of the March 30, 2005 Decision:

> Going over the Decision, specifically page 12 thereof, the Court noted that, in addition to the amount of Two Hundred Seventy Thousand (₱270,000.00) which plaintiff-appellant should return to the defendants-appellants, the Court also ruled that defendants-appellants should, in turn, relinquish possession of the Minilab Equipment and the standard accessories to plaintiff-appellant. Inadvertently, these material items were not mentioned in the decretal portion of the Decision. Hence, the proper correction should herein be made.[65]

The Lam Spouses filed this Petition for Review on April 14, 2005. On the other hand, Kodak Philippines, Ltd. filed its Motion for Reconsideration[66] before the Court of Appeals on April 22, 2005.

While the Petition for Review on Certiorari filed by the Lam Spouses was pending before this court, the Court of Appeals Special Fourteenth Division, acting on Kodak Philippines, Ltd.'s Motion for Reconsideration, issued the Amended Decision[67] dated September 9, 2005. The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, this Court resolved that:
>
> A. Plaintiff-appellant's Motion for Reconsideration is hereby **DENIED** for lack of merit.

---

[64] *Id*. at 368-371.

[65] *Id*. at 369.

[66] *Id*. at 385.

[67] *Id*. at 367. The Amended Decision was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin (now an Associate Justice of this court) and Rosalinda Asuncion-Vicente of the Special Fourteenth Division, Court of Appeals Manila.

B. The decretal portion of the 30 March 2005 Decision should now read as follows:

"WHEREFORE, PREMISES CONSIDERED, the Assailed Decision dated 26 February 1999 of the Regional Trial Court, Branch 65 in Civil Cases No. 92-3442 is hereby **MODIFIED.** Plaintiff-appellant is ordered to pay the following:

a. ~~₱~~270,000.00 representing the partial payment made on the Minilab equipment.

b. ~~₱~~130,000.00 representing the amount of the generator set, plus legal interest at 12% per annum from December 1992 until fully paid;

c. ~~₱~~440,000.00 as actual damages;

d. ~~₱~~25,000.00 as moral damages; and

e. ~~₱~~50,000.00 as exemplary damages.

Upon the other hand, defendants-appellants are hereby ordered to return to plaintiff-appellant the Minilab equipment and the standard accessories delivered by plaintiff-appellant.

SO ORDERED."

**SO ORDERED.**[68] (Emphasis in the original)

Upon receiving the Amended Decision of the Court of Appeals, Kodak Philippines, Ltd. filed a Motion for Extension of Time to File an Appeal by Certiorari under Rule 45 of the 1997 Rules of Civil Procedure before this court.[69]

This was docketed as G.R. No. 169639. In the Motion for Consolidation dated November 2, 2005, the Lam Spouses moved that G.R. No. 167615 and G.R. No. 169639 be consolidated since both involved the same parties, issues, transactions, and essential facts and circumstances.[70]

---

[68] *Id*. at 370-371.

[69] *Id*. at 393.

[70] *Id*. at 384-388.

In the Resolution dated November 16, 2005, this court noted the Lam Spouses' September 23 and September 30, 2005 Manifestations praying that the Court of Appeals' September 9, 2005 Amended Decision be considered in the resolution of the Petition for Review on Certiorari.[71] It also granted the Lam Spouses' Motion for Consolidation.[72]

In the Resolution[73] dated September 20, 2006, this court deconsolidated G.R. No. 167615 from G.R. No. 169639 and declared G.R. No. 169639 closed and terminated since Kodak Philippines, Ltd. failed to file its Petition for Review.

II

We resolve the following issues:

First, whether the contract between petitioners Spouses Alexander and Julie Lam and respondent Kodak Philippines, Ltd. pertained to obligations that are severable, divisible, and susceptible of partial performance under Article 1225 of the New Civil Code; and

Second, upon rescission of the contract, what the parties are entitled to under Article 1190 and Article 1522 of the New Civil Code.

Petitioners argue that the Letter Agreement it executed with respondent for three (3) Minilab Equipment units was not severable, divisible, and susceptible of partial performance. Respondent's recovery of the delivered unit was unjustified.[74]

Petitioners assert that the obligations of the parties were not susceptible of partial performance since the Letter Agreement was for a package deal consisting of three (3) units.[75] For the

---

[71] *Id*. at 383-A.

[72] *Id*. at 383-B.

[73] *Id*. at 504.

[74] *Id*. at 446-456.

[75] *Id*. at 449.

delivery of these units, petitioners were obliged to pay 48 monthly payments, the total of which constituted one debt.[76] Having relied on respondent's assurance that the three units would be delivered at the same time, petitioners simultaneously rented and renovated three stores in anticipation of simultaneous operations.[77] Petitioners argue that the divisibility of the object does not necessarily determine the divisibility of the obligation since the latter is tested against its susceptibility to a partial performance.[78] They argue that even if the object is susceptible of separate deliveries, the transaction is indivisible if the parties intended the realization of all parts of the agreed obligation.[79]

Petitioners support the claim that it was the parties' intention to have an indivisible agreement by asserting that the payments they made to respondent were intended to be applied to the whole package of three units.[80] The postdated checks were also intended as initial payment for the whole package.[81] The separate purchase price for each item was merely intended to particularize the unit prices, not to negate the indivisible nature of their transaction.[82] As to the issue of delivery, petitioners claim that their acceptance of separate deliveries of the units was solely due to the constraints faced by respondent, who had sole control over delivery matters.[83]

With the obligation being indivisible, petitioners argue that respondent's failure to comply with its obligation to deliver the two (2) remaining Minilab Equipment units amounted to a breach. Petitioners claim that the breach entitled them to the

---

[76] *Id*.

[77] *Id*. at 450.

[78] *Id*. at 450-453.

[79] *Id*. at 30-31 and 453.

[80] *Id*. at 455.

[81] *Id*. at 456.

[82] *Id*. at 455-456.

[83] *Id*. at 456.

remedy of rescission and damages under Article 1191 of the New Civil Code.[84]

Petitioners also argue that they are entitled to moral damages more than the ₱50,000.00 awarded by the Court of Appeals since respondent's wrongful act of accusing them of non-payment of their obligations caused them sleepless nights, mental anguish, and wounded feelings.[85] They further claim that, to serve as an example for the public good, they are entitled to exemplary damages as respondent, in making false allegations, acted in evident bad faith and in a wanton, oppressive, capricious, and malevolent manner.[86]

Petitioners also assert that they are entitled to attorney's fees and litigation expenses under Article 2208 of the New Civil Code since respondent's act of bringing a suit against them was baseless and malicious. This prompted them to engage the services of a lawyer.[87]

Respondent argues that the parties' Letter Agreement contained divisible obligations susceptible of partial performance as defined by Article 1225 of the New Civil Code.[88] In respondent's view, it was the intention of the parties to be bound separately for each individually priced Minilab Equipment unit to be delivered to different outlets:[89]

> The three (3) Minilab Equipment are intended by petitioners LAM for install[a]tion at their Tagum, Davao del Norte, Sta. Cruz, Manila and Cotabato City outlets. Each of these units [is] independent from one another, as many of them may perform its own job without the other. Clearly the objective or purpose of the prestation, the obligation is divisible.

---

[84] *Id*. at 460.

[85] *Id*. at 462.

[86] *Id*. at 468-469.

[87] *Id*. at 472-473.

[88] *Id*. at 548.

[89] *Id*. at 548-549.

The nature of each unit of the three (3) Minilab Equipment is such that one can perform its own functions, without awaiting for the other units to perform and complete its job. So much so, the nature of the object of the Letter Agreement is susceptible of partial performance, thus the obligation is divisible.[90]

With the contract being severable in character, respondent argues that it performed its obligation when it delivered one unit of the Minilab Equipment.[91] Since each unit could perform on its own, there was no need to await the delivery of the other units to complete its job.[92] Respondent then is of the view that when petitioners ordered the depository bank to stop payment of the issued checks covering the first delivered unit, they violated their obligations under the Letter Agreement since respondent was already entitled to full payment.[93]

Respondent also argues that petitioners benefited from the use of the Minilab Equipment for 10 months—from March to December 1992—despite having paid only two (2) monthly installments.[94] Respondent avers that the two monthly installments amounting to ₱70,000.00 should be the subject of an offset against the amount the Court of Appeals awarded to petitioners.[95]

Respondent further avers that petitioners have no basis for claiming damages since the seizure and recovery of the Minilab Equipment was not in bad faith and respondent was well within its right.[96]

III

The Letter Agreement contained an indivisible obligation.

---

[90] *Id*. at 549.

[91] *Id*.

[92] *Id*.

[93] *Id*. at 550.

[94] *Id.* at 551.

[95] *Id*. at 552.

[96] *Id*. at 554.

Both parties rely on the Letter Agreement[97] as basis of their respective obligations. Written by respondent's Jeffrey T. Go and Antonio V. Mines and addressed to petitioner Alexander Lam, the Letter Agreement contemplated a "package deal" involving three (3) units of the Kodak Minilab System 22XL, with the following terms and conditions:

> This confirms our verbal agreement for Kodak Phils., Ltd. to provide Colorkwik Laboratories, Inc. with three (3) units Kodak Minilab System 22XL . . . for your proposed outlets in Rizal Avenue (Manila), Tagum (Davao del Norte), and your existing Multicolor photo counter in Cotabato City under the following terms and conditions:
>
> 1. Said Minilab Equipment packages will avail a total of 19% multiple order discount based on prevailing equipment price provided said equipment packages will be purchased not later than June 30, 1992.
>
> 2. 19% Multiple Order Discount shall be applied in the form of merchandise and delivered in advance immediately after signing of the contract.
> * Also includes start-up packages worth ₱61,000.00.
>
> 3. NO DOWNPAYMENT.
>
> 4. Minilab Equipment Package shall be payable in 48 monthly installments at THIRTY FIVE THOUSAND PESOS (₱35,000.00) inclusive of 24% interest rate for the first 12 months; the balance shall be re-amortized for the remaining 36 months and the prevailing interest shall be applied.
>
> 5. Prevailing price of Kodak Minilab System 22XL as of January 8, 1992 is at ONE MILLION SEVEN HUNDRED NINETY SIX THOUSAND PESOS.
>
> 6. Price is subject to change without prior notice.
> *Secured with PDCs; 1st monthly amortization due 45 days after installation[.][98]

Based on the foregoing, the intention of the parties is for there to be a single transaction covering all three (3) units of the Minilab Equipment. Respondent's obligation was to deliver

---

[97] *Id*. at 94.

[98] *Id*. at 94.

all products purchased under a "package," and, in turn, petitioners' obligation was to pay for the total purchase price, payable in installments.

The intention of the parties to bind themselves to an indivisible obligation can be further discerned through their direct acts in relation to the package deal. There was only one agreement covering all three (3) units of the Minilab Equipment and their accessories. The Letter Agreement specified only one purpose for the buyer, which was to obtain these units for three different outlets. If the intention of the parties were to have a divisible contract, then separate agreements could have been made for each Minilab Equipment unit instead of covering all three in one package deal. Furthermore, the 19% multiple order discount as contained in the Letter Agreement was applied to all three acquired units.[99] The "no downpayment" term contained in the Letter Agreement was also applicable to all the Minilab Equipment units. Lastly, the fourth clause of the Letter Agreement clearly referred to the object of the contract as "Minilab Equipment Package."

In ruling that the contract between the parties intended to cover divisible obligations, the Court of Appeals highlighted: (a) the separate purchase price of each item; (b) petitioners' acceptance of separate deliveries of the units; and (c) the separate payment arrangements for each unit.[100] However, through the specified terms and conditions, the tenor of the Letter Agreement indicated an intention for a single transaction. This intent must prevail even though the articles involved are physically separable and capable of being paid for and delivered individually, consistent with the New Civil Code:

> Article 1225. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

---

[99] *Id*. at 356. Aside from the Letter Agreement, the 19% Multiple Order Discount was also contained in the Sample Computation supplied by respondent to petitioner.

[100] *Id*. at 66.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

*However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.* (Emphasis supplied)

In *Nazareno v. Court of Appeals,*[101] the indivisibility of an obligation is tested against whether it can be the subject of partial performance:

*An obligation is indivisible when it cannot be validly performed in parts, whatever may be the nature of the thing which is the object thereof. The indivisibility refers to the prestation and not to the object thereof.* In the present case, the Deed of Sale of January 29, 1970 supposedly conveyed the six lots to Natividad. The obligation is clearly indivisible because the performance of the contract cannot be done in parts, otherwise the value of what is transferred is diminished. Petitioners are therefore mistaken in basing the indivisibility of a contract on the number of obligors.[102] (Emphasis supplied, citation omitted)

There is no indication in the Letter Agreement that the units petitioners ordered were covered by three (3) separate transactions. The factors considered by the Court of Appeals are mere incidents of the execution of the obligation, which is to deliver three units of the Minilab Equipment on the part of respondent and payment for all three on the part of petitioners. The intention to create an indivisible contract is apparent from the benefits that the Letter Agreement afforded to both parties. Petitioners were given the 19% discount on account of a multiple order, with the discount being equally applicable to all units that they sought to acquire. The provision on "no downpayment" was also applicable to all units. Respondent, in turn, was entitled to payment of all three Minilab Equipment units, payable by installments.

---

[101] 397 Phil. 707 (2000) [Per *J*. Mendoza, Second Division].

[102] *Id*. at 729.

IV

With both parties opting for rescission of the contract under Article 1191, the Court of Appeals correctly ordered for restitution.

The contract between the parties is one of sale, where one party obligates himself or herself to transfer the ownership and deliver a determinate thing, while the other pays a certain price in money or its equivalent.[103] A contract of sale is perfected upon the meeting of minds as to the object and the price, and the parties may reciprocally demand the performance of their respective obligations from that point on.[104]

The Court of Appeals correctly noted that respondent had rescinded the parties' Letter Agreement through the letter dated October 14, 1992.[105] It likewise noted petitioners' rescission through the letter dated November 18, 1992.[106] This rescission from both parties is founded on Article 1191 of the New Civil Code:

> 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 fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

---

[103] CIVIL CODE, Art. 1458 - By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver the determinate thing, and the other to pay therefore a price certain in money or its equivalent.

[104] *Province of Cebu v. Heirs of Morales,* 569 Phil. 641 (2008) [Per *J.* Ynares-Santiago, Third Division].

[105] *Rollo*, p. 68.

[106] *Id*.

Rescission under Article 1191 has the effect of mutual restitution.[107] In *Velarde v. Court of Appeals:*[108]

> Rescission abrogates the contract from its inception and requires a mutual restitution of benefits received.
>
> . . . .
>
> *Rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made*.[109] (Emphasis supplied, citations omitted)

The Court of Appeals correctly ruled that both parties must be restored to their original situation as far as practicable, as if the contract was never entered into. Petitioners must relinquish possession of the delivered Minilab Equipment unit and accessories, while respondent must return the amount tendered by petitioners as partial payment for the unit received. Further, respondent cannot claim that the two (2) monthly installments should be offset against the amount awarded by the Court of Appeals to petitioners because the effect of rescission under Article 1191 is to bring the parties back to their original positions before the contract was entered into. Also in *Velarde*:

> As discussed earlier, the breach committed by petitioners was the nonperformance of a reciprocal obligation, not a violation of the terms and conditions of the mortgage contract. Therefore, the automatic rescission and forfeiture of payment clauses stipulated in the contract does not apply. Instead, Civil Code provisions shall govern and regulate the resolution of this controversy.

---

[107] *Laperal v. Southridge*, 499 Phil. 367 (2005) [Per *J*. Garcia, Third Division].

[108] 413 Phil. 360 (2001) [Per *J*. Panganiban, Third Division].

[109] *Id*. at 363-375.

*Considering that the rescission of the contract is based on Article 1191 of the Civil Code, mutual restitution is required to bring back the parties to their original situation prior to the inception of the contract. Accordingly, the initial payment of ₱800,000 and the corresponding mortgage payments in the amounts of ₱27,225, 23,000 and ₱23,925 (totaling ₱874,150.00) advanced by petitioners should be returned by private respondents, lest the latter unjustly enrich themselves at the expense of the former.*[110] (Emphasis supplied)

When rescission is sought under Article 1191 of the Civil Code, it need not be judicially invoked because the power to resolve is implied in reciprocal obligations.[111] The right to resolve allows an injured party to minimize the damages he or she may suffer on account of the other party's failure to perform what is incumbent upon him or her.[112] When a party fails to comply with his or her obligation, the other party's right to resolve the contract is triggered.[113] The resolution immediately produces legal effects if the non-performing party does not question the resolution.[114] Court intervention only becomes necessary when the party who allegedly failed to comply with his or her obligation disputes the resolution of the contract.[115] Since both parties in this case have exercised their right to resolve under Article 1191, there is no need for a judicial decree before the resolution produces effects.

V

The issue of damages is a factual one. A petition for review on certiorari under Rule 45 shall only pertain to questions of

---

[110] *Id.* at 375.

[111] *J.* Leonen, Concurring Opinion in *EDS Manufacturing, Inc. v. Healthcheck International, Inc.,* G.R. No. 162802, October 9, 2013, 707 SCRA 133 [Per *J.* Peralta, Third Division].

[112] *Id. See also University of the Philippines v. De Los Angeles*, 146 Phil. 108 (1970) [Per *J.* J. B. L. Reyes, Second Division].

[113] *Id.*

[114] *Id.*

[115] *Id.*

law.[116] It is not the duty of this court to re-evaluate the evidence adduced before the lower courts.[117] Furthermore, unless the petition clearly shows that there is grave abuse of discretion, the findings of fact of the trial court as affirmed by the Court of Appeals are conclusive upon this court.[118] In *Lorzano v. Tabayag, Jr.*:[119]

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.*

. . . .

*For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact.*

*Essentially, the petitioner is questioning the award of moral damages and attorney's fees in favor of the respondent as the same is supposedly not fully supported by evidence. However, in the final analysis, the question of whether the said award is fully supported by evidence is a factual question as it would necessitate whether the evidence adduced in support of the same has any probative value. For a question to be one of law, it must involve no examination of*

---

[116] RULES OF COURT, Rule 45, Sec. 1.

[117] *Frondarina v. Malazarte*, 539 Phil. 279 (2006) [Per *J.* Velasco Jr., Third Division].

[118] *Muaje-Tuazon v. Wenphil Corporation*, 540 Phil. 503 (2006) [Per *J.* Quisumbing, Third Division].

[119] *Lorzano v. Tabayag, Jr.,* 681 Phil. 39 (2012) [Per *J.* Reyes, Second Division].

*the probative value of the evidence presented by the litigants or any of them.*[120] (Emphasis supplied, citations omitted)

The damages awarded by the Court of Appeals were supported by documentary evidence.[121] Petitioners failed to show any reason why the factual determination of the Court of Appeals must be reviewed, especially in light of their failure to produce receipts or check payments to support their other claim for actual damages.[122]

Furthermore, the actual damages amounting to ₱2,040,000.00 being sought by petitioners[123] must be tempered on account of their own failure to pay the rest of the installments for the delivered unit. This failure on their part is a breach of their obligation, for which the liability of respondent, for its failure to deliver the remaining units, shall be equitably tempered on account of Article 1192 of the New Civil Code.[124] In *Central Bank of the Philippines v. Court of Appeals*:[125]

*Since both parties were in default in the performance of their respective reciprocal obligations*, that is, Island Savings Bank failed to comply with its obligation to furnish the entire loan and Sulpicio M. Tolentino failed to comply with his obligation to pay his ₱17,000.00 debt within 3 years as stipulated, *they are both liable for damages.*

*Article 1192 of the Civil Code provides that in case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equitably tempered by the courts.* WE rule that the liability of Island Savings Bank for damages in not

---

[120] *Id.* at 48-50.

[121] *Rollo*, pp. 70-73.

[122] *Id.* at 71.

[123] *Id.* at 52.

[124] Article 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his won damages.

[125] 223 Phil. 266 (1985) [Per *C.J.* Makasiar, Second Division].

furnishing the entire loan is offset by the liability of Sulpicio M. Tolentino for damages, in the form of penalties and surcharges, for not paying his overdue ₱17,000.00 debt. The liability of Sulpicio M. Tolentino for interest on his ₱17,000.00 debt shall not be included in offsetting the liabilities of both parties. Since Sulpicio M. Tolentino derived some benefit for his use of the ₱17,000.00, it is just that he should account for the interest thereon.[126] (Emphasis supplied)

The award for moral and exemplary damages also appears to be sufficient. Moral damages are granted to alleviate the moral suffering suffered by a party due to an act of another, but it is not intended to enrich the victim at the defendant's expense.[127] It is not meant to punish the culpable party and, therefore, must always be reasonable vis-a-vis the injury caused.[128] Exemplary damages, on the other hand, are awarded when the injurious act is attended by bad faith.[129] In this case, respondent was found to have misrepresented its right over the generator set that was seized. As such, it is properly liable for exemplary damages as an example to the public.[130]

However, the dispositive portion of the Court of Appeals Amended Decision dated September 9, 2005 must be modified to include the recovery of attorney's fees and costs of suit in favor of petitioners. In *Sunbanun v. Go*:[131]

Furthermore, we affirm the award of exemplary damages and attorney's fees. Exemplary damages may be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner which would justify an award of exemplary damages under Article 2232 of the Civil Code. *Since the award of exemplary damages is proper in this case, attorney's fees and cost of the suit may also be recovered*

---

[126] *Id.* at 276-277.

[127] *Lorzano v. Tabayag*, Jr., 681 Phil. 39 (2012) [Per *J.* Reyes, Second Division].

[128] *Id.*

[129] *Sunbanun v. Go*, 625 Phil. 159 (2010) [Per *J.* Carpio, Second Division].

[130] *Rollo*, p. 74.

[131] 625 Phil. 159 (2010) [Per *J.* Carpio, Second Division].

*as provided under Article 2208 of the Civil Code*.[132] (Emphasis supplied, citation omitted)

Based on the amount awarded for moral and exemplary damages, it is reasonable to award petitioners ₱20,000.00 as attorney's fees.

**WHEREFORE**, the Petition is **DENIED**. The Amended Decision dated September 9, 2005 is **AFFIRMED with MODIFICATION.** Respondent Kodak Philippines, Ltd. is ordered to pay petitioners Alexander and Julie Lam:

(a) ₱270,000.00, representing the partial payment made on the Minilab Equipment;

(b) ₱130,000.00, representing the amount of the generator set, plus legal interest at 12% per annum from December 1992 until fully paid;

(c) ₱440,000.00 as actual damages;

(d) ₱25,000.00 as moral damages;

(e) ₱50,000.00 as exemplary damages; and

(f) ₱20,000.00 as attorney's fees.

Petitioners are ordered to return the Kodak Minilab System 22XL unit and its standard accessories to respondent.

**SO ORDERED.**

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

---

[132] *Id*. at 166-167.

**SECOND DIVISION**

[G.R. No. 169507. January 11, 2016]

**AIR CANADA,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

**SYLLABUS**

1. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); TAX ON GROSS PHILIPPINE BILLINGS; THE TAX ATTACHES ONLY WHEN THE CARRIER OF PERSONS, EXCESS BAGGAGE CARGO, AND MAIL ORIGINATED FROM THE PHILIPPINES IN A CONTINUOUS AND UNINTERRUPTED FLIGHT, REGARDLESS OF WHERE THE PASSAGE DOCUMENTS WERE SOLD.—** At the outset, we affirm the Court of Tax Appeals' ruling that petitioner, as an offline international carrier with no landing rights in the Philippines, is not liable to tax on Gross Philippine Billings under Section 28(A)(3) of the 1997 National Internal Revenue Code: x x x Under the foregoing provision, the tax attaches only when the carriage of persons, excess baggage, cargo, and mail originated from the Philippines in a continuous and uninterrupted flight, regardless of where the passage documents were sold. Not having flights to and from the Philippines, petitioner is clearly not liable for the Gross Philippine Billings tax.

2. **ID.; ID.; AN OFFLINE CARRIER IS A RESIDENT FOREIGN CORPORATION FOR INCOME TAX PURPOSES; SUSTAINED.—** Petitioner, an offline carrier, is a resident foreign corporation for income tax purposes. Petitioner falls within the definition of resident foreign corporation under Section 28(A)(1) of the 1997 National Internal Revenue Code, thus, it may be subject to 32% tax on its taxable income: x x x The definition of "resident foreign corporation" has not substantially changed throughout the amendments of the National Internal Revenue Code. All versions refer to "a foreign corporation engaged in trade or business within the Philippines." x x x Presidential Decree No. 1158-A took effect on June 3, 1977 amending certain sections of the 1939 National Internal Revenue Code. Section 24(b)(2) on foreign resident corporations

was amended, but it still provides that "[a] corporation organized, authorized, or existing under the laws of any foreign country, *engaged in trade or business within the Philippines,* shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines[.]" As early as 1987, this court in *Commissioner of Internal Revenue v. British Overseas Airways Corporation* declared British Overseas Airways Corporation, an international air carrier with no landing rights in the Philippines, as a resident foreign corporation engaged in business in the Philippines through its local sales agent that sold and issued tickets for the airline company. x x x Republic Act No. 7042 or the Foreign Investments Act of 1991 also provides guidance with its definition of "doing business" with regard to foreign corporations. Section 3(d) of the law enumerates the activities that constitute doing business: x x x While Section 3(d) above states that "appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account" is not considered as "doing business," the Implementing Rules and Regulations of Republic Act No. 7042 clarifies that "doing business" includes "*appointing representatives or distributors,* ***operating under full control of the foreign corporation****,* domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more[.]" An offline carrier is "any foreign air carrier not certificated by the [Civil Aeronautics] Board, but who maintains office or *who has designated or appointed agents or employees in the Philippines,* who sells or offers for sale any air transportation in behalf of said foreign air carrier and/or others, or negotiate for, or holds itself out by solicitation, advertisement, or otherwise sells, provides, furnishes, contracts, or arranges for such transportation." "Anyone desiring to engage in the activities of an off-line carrier [must] apply to the [Civil Aeronautics] Board for such authority." Each offline carrier must file with the Civil Aeronautics Board a monthly report containing information on the tickets sold, such as the origin and destination of the passengers, carriers involved, and commissions received. Petitioner is undoubtedly "doing business" or "engaged in trade or business" in the Philippines.

**3. ID.; ID.; TAX TREATY; DEFINED; PURPOSE, EXPLAINED.—** A tax treaty is an agreement entered into

between sovereign states "for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals." *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.* explained the purpose of a tax treaty: The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.

**4. ID.; ID.; ID.; THE APPLICATION OF THE PROVISIONS OF THE NIRC MUST BE SUBJECT TO THE PROVISIONS OF TAX TREATIES ENTERED INTO BY THE PHILIPPINES WITH FOREIGN COUNTRIES; RATIONALE.—** Observance of any treaty obligation binding upon the government of the Philippines is anchored on the constitutional provision that the Philippines "adopts the generally accepted principles of international law as part of the law of the land[.]"*Pacta sunt servanda* is a fundamental international law principle that requires agreeing parties to comply with their treaty obligations in good faith. Hence, the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries. x x x Through the appointment of Aerotel as its local sales agent, petitioner is deemed to have created a "permanent establishment" in the Philippines as defined under the Republic of the Philippines-Canada Tax Treaty.

**5. ID.; ID.; ID.; WHILE PETITIONER IS TAXABLE AS A RESIDENT FOREIGN CORPORATION, IT CAN ONLY BE TAXED AT A MAXIMUM OF 1½% OF GROSS REVENUES PURSUANT TO THE TAX TREATY ENTERED INTO BETWEEN THE PHILIPPINES AND CANADA; ELUCIDATED.—** While petitioner is taxable as a resident foreign corporation under Section 28(A)(1) of the 1997 National Internal Revenue Code on its taxable income from sale of airline tickets in the Philippines*, it could only be taxed at a maximum of 1½% of gross revenues,* pursuant to

Article VIII of the Republic of the Philippines-Canada Tax Treaty that applies to petitioner as a "foreign corporation organized and existing under the laws of Canada[.]" Tax treaties form part of the law of the land, and jurisprudence has applied the statutory construction principle that specific laws prevail over general ones. The Republic of the Philippines-Canada Tax Treaty was ratified on December 21, 1977 and became valid and effective on that date. On the other hand, the applicable provisions relating to the taxability of resident foreign corporations and the rate of such tax found in the National Internal Revenue Code became effective on January 1, 1998. Ordinarily, the later provision governs over the earlier one. In this case, however, the provisions of the Republic of the Philippines-Canada Tax Treaty are more specific than the provisions found in the National Internal Revenue Code. These rules of interpretation apply even though one of the sources is a treaty and not simply a statute. x x x "[B]y reason of our bilateral negotiations with [Canada], we have agreed to have our right to tax limited to a certain extent[.]" Thus, we are bound to extend to a Canadian air carrier doing business in the Philippines through a local sales agent the benefit of a lower tax equivalent to 1½% on business profits derived from sale of international air transportation.

**6. ID.; ID.; TAX REFUND; THE DETERMINATION OF THE PROPER CATEGORY OF TAX THAT SHOULD HAVE BEEN PAID IS INCIDENTAL AND NECESSARY TO RESOLVE THE ISSUE OF WHETHER A REFUND SHOULD BE GRANTED; APPLICATION IN CASE AT BAR.—** In *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we have ruled that "[i]n an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid." The determination of the proper category of tax that should have been paid is incidental and necessary to resolve the issue of whether a refund should be granted. x x x Hence, the Court of Tax Appeals properly denied petitioner's claim for refund of allegedly erroneously paid tax on its Gross Philippine Billings, on the ground that it was liable instead for the regular 32% tax on its taxable income received from sources within the Philippines. Its determination of petitioner's liability for the 32% regular income tax was made merely for the purpose of ascertaining petitioner's entitlement to a tax refund and not

for imposing any deficiency tax. In this regard, the matter of set-off raised by petitioner is not an issue. Besides, the cases cited are based on different circumstances. In both cited cases, the taxpayer claimed that his (its) tax liability was off-set by his (its) claim against the government. In sum, the rulings in those cases were to the effect that the taxpayer cannot simply refuse to pay tax on the ground that the tax liabilities were off-set against any alleged claim the taxpayer may have against the government. Such would merely be in keeping with the basic policy on prompt collection of taxes as the lifeblood of the government. x x x In this case, the ₱5,185,676.77 Gross Philippine Billings tax paid by petitioner was computed at the rate of 1½% of its gross revenues amounting to ₱345,711,806.08 from the third quarter of 2000 to the second quarter of 2002. It is quite apparent that the tax imposable under Section 28(A)(1) of the 1997 National Internal Revenue Code [32% of taxable income, that is, gross income less deductions] will exceed the maximum ceiling of 1½% of gross revenues as decreed in Article VIII of the Republic of the Philippines-Canada Tax Treaty. Hence, no refund is forthcoming.

**APPEARANCES OF COUNSEL**

*Quisumbing Torres* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**LEONEN, *J.*:**

An offline international air carrier selling passage tickets in the Philippines, through a general sales agent, is a resident foreign corporation doing business in the Philippines. As such, it is taxable under Section 28(A)(1), and not Section 28(A)(3) of the 1997 National Internal Revenue Code, subject to any applicable tax treaty to which the Philippines is a signatory. Pursuant to Article 8 of the Republic of the Philippines-Canada Tax Treaty, Air Canada may only be imposed a maximum tax of 1½% of its gross revenues earned from the sale of its tickets in the Philippines.

This is a Petition for Review[1] appealing the August 26, 2005 Decision[2] of the Court of Tax Appeals En Banc, which in turn affirmed the December 22, 2004 Decision[3] and April 8, 2005 Resolution[4] of the Court of Tax Appeals First Division denying Air Canada's claim for refund.

Air Canada is a "foreign corporation organized and existing under the laws of Canada[.]"[5] On April 24, 2000, it was granted an authority to operate as an offline carrier by the Civil Aeronautics Board, subject to certain conditions, which authority would expire on April 24, 2005.[6] "As an off-line carrier, [Air Canada] does not have flights originating from or coming to the Philippines [and does not] operate any airplane [in] the Philippines[.]"[7]

On July 1, 1999, Air Canada engaged the services of Aerotel Ltd., Corp. (Aerotel) as its general sales agent in the Philippines.[8] Aerotel "sells [Air Canada's] passage documents in the Philippines."[9]

For the period ranging from the third quarter of 2000 to the second quarter of 2002, Air Canada, through Aerotel, filed quarterly and annual income tax returns and paid the income

---

[1] *Rollo*, pp. 9-40. The Petition was filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 57-72. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova. Associate Justice Juanito C. Castañeda, Jr. voluntarily inhibited himself.

[3] *Id*. at 41-51. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

[4] *Id*. at 52-56. The Resolution was signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova.

[5] *Id*. at 59, Court of Tax Appeals *En Banc* Decision.

[6] *Id*. at 78, Civil Aeronautics Board Executive Director's Letter.

[7] *Id*. at 300, Air Canada's Memorandum.

[8] *Id*. at 118-140, Passenger General Sales Agency Agreement Between Air Canada and Aerotel Ltd., Corp.

[9] *Id*. at 300, Air Canada's Memorandum.

tax on Gross Philippine Billings in the total amount of ₱5,185,676.77,[10] detailed as follows:

| **Applicable Quarter[/]Year** | **Date Filed/Paid** | **Amount of Tax** |
|---|---|---|
| 3rd Qtr 2000 | November 29, 2000 | ₱ 395,165.00 |
| Annual ITR 2000 | April 16, 2001 | 381,893.59 |
| 1st Qtr 2001 | May 30, 2001 | 522,465.39 |
| 2nd Qtr 2001 | August 29, 2001 | 1,033,423.34 |
| 3rd Qtr 2001 | November 29, 2001 | 765,021.28 |
| Annual ITR 2001 | April 15, 2002 | 328,193.93 |
| 1st Qtr 2002 | May 30, 2002 | 594,850.13 |
| 2nd Qtr 2002 | August 29, 2002 | 1,164,664.11 |
| **TOTAL** | | **₱ 5,185,676.77**[11] |

On November 28, 2002, Air Canada filed a written claim for refund of alleged erroneously paid income taxes amounting to ₱5,185,676.77 before the Bureau of Internal Revenue,[12] Revenue District Office No. 47-East Makati.[13] It found basis from the revised definition[14] of Gross Philippine Billings under Section 28(A)(3)(a) of the 1997 National Internal Revenue Code:

---

[10] *Id*. at 59-60, Court of Tax Appeals *En Banc* Decision.

[11] *Id*.

[12] *Id*. at 60.

[13] *Id*. at 13, Petition.

[14] Pres. Decree No. 1355 (1978), Sec. 1 defines Gross Philippine Billings as: "Gross Philippine billings" includes gross revenue realized *from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein,* whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail shall include the gross freight charge up to final destination. Gross revenues from chartered flights originating from the Philippines shall likewise form part of "gross Philippine billings" regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights, the term "originating from the Philippines" shall include flight of passengers who stay in the Philippines for more than forty-eight (48) hours prior to embarkation." (Emphasis supplied)

**SEC. 28. Rates of Income Tax on Foreign Corporations. -**

(A) *Tax on Resident Foreign Corporations*. -

. . . .

(3) International Carrier. - An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:

(a) International Air Carrier. - 'Gross Philippine Billings' refers to the amount of **gross revenue derived from carriage of persons, excess baggage, cargo and mail *originating from the Philippines in a continuous and uninterrupted flight***, **irrespective of the place of sale or issue and the place of payment of the ticket or passage document**: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings. (Emphasis supplied)

To prevent the running of the prescriptive period, Air Canada filed a Petition for Review before the Court of Tax Appeals on November 29, 2002.[15] The case was docketed as C.T.A. Case No. 6572.[16]

On December 22, 2004, the Court of Tax Appeals First Division rendered its Decision denying the Petition for Review and, hence, the claim for refund.[17] It found that Air Canada was engaged in business in the Philippines through a local agent that sells airline tickets on its behalf. As such, it should be

---

[15] *Rollo*, p. 60, Court of Tax Appeals *En Banc* Decision.

[16] *Id*. at 41, Court of Tax Appeals First Division Decision.

[17] *Id*. at 51.

taxed as a resident foreign corporation at the regular rate of 32%.[18] Further, according to the Court of Tax Appeals First Division, Air Canada was deemed to have established a "permanent establishment"[19] in the Philippines under Article V(2)(i) of the Republic of the Philippines-Canada Tax Treaty[20] by the appointment of the local sales agent, "in which [the] petitioner uses its premises as an outlet where sales of [airline] tickets are made[.]"[21]

Air Canada seasonably filed a Motion for Reconsideration, but the Motion was denied in the Court of Tax Appeals First Division's Resolution dated April 8, 2005 for lack of merit.[22] The First Division held that while Air Canada was not liable for tax on its Gross Philippine Billings under Section 28(A)(3), it was nevertheless liable to pay the 32% corporate income tax on income derived from the sale of airline tickets within the Philippines pursuant to Section 28(A)(1).[23]

On May 9, 2005, Air Canada appealed to the Court of Tax Appeals En Banc.[24] The appeal was docketed as CTA EB No. 86.[25]

In the Decision dated August 26, 2005, the Court of Tax Appeals En Banc affirmed the findings of the First Division.[26] The En Banc ruled that Air Canada is subject to tax as a resident foreign corporation doing business in the Philippines since it sold airline tickets in the Philippines.[27] The Court of Tax Appeals En Banc disposed thus:

---

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

[19] *Id*. at 51.

[20] *Id*. at 50.

[21] *Id*. at 51.

[22] *Id*. at 53 and 56, Court of Tax Appeals First Division Resolution.

[23] *Id*. at 54.

[24] *Id*. at 16, Petition.

[25] *Id*.

[26] *Id*. at 71, Court of Tax Appeals *En Banc* Decision.

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

**WHEREFORE**, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.[28]

Hence, this Petition for Review[29] was filed.

The issues for our consideration are:

First, whether petitioner Air Canada, as an offline international carrier selling passage documents through a general sales agent in the Philippines, is a resident foreign corporation within the meaning of Section 28(A)(1) of the 1997 National Internal Revenue Code;

Second, whether petitioner Air Canada is subject to the 2½% tax on Gross Philippine Billings pursuant to Section 28(A)(3). If not, whether an offline international carrier selling passage documents through a general sales agent can be subject to the regular corporate income tax of 32%[30] on taxable income pursuant to Section 28(A)(1);

Third, whether the Republic of the Philippines-Canada Tax Treaty applies, specifically:

a. Whether the Republic of the Philippines-Canada Tax Treaty is enforceable;

b. Whether the appointment of a local general sales agent in the Philippines falls under the definition of "permanent establishment" under Article V(2)(i) of the Republic of the Philippines-Canada Tax Treaty; and

---

[28] *Id*. at 71.

[29] The Petition was received by the court on October 20, 2005. Respondent filed its Comment (*Id*. at 252-261) on August 6, 2007. Subsequently, pursuant to the court's Resolution (*Id*. at 282-283) dated November 28, 2007, petitioner filed its Memorandum (*Id*. at 284-328) on February 21, 2008 and respondent filed its Manifestation (*Id*. at 349-350) on January 5, 2009, stating that it is adopting its Comment as its Memorandum.

[30] Pursuant to Rep. Act No. 9337 (2005), the rate is reduced to 30% beginning January 1, 2009.

Lastly, whether petitioner Air Canada is entitled to the refund of ₱5,185,676.77 pertaining allegedly to erroneously paid tax on Gross Philippine Billings from the third quarter of 2000 to the second quarter of 2002.

Petitioner claims that the general provision imposing the regular corporate income tax on resident foreign corporations provided under Section 28(A)(1) of the 1997 National Internal Revenue Code does not apply to "international carriers,"[31] which are especially classified and taxed under Section 28(A)(3).[32] It adds that the fact that it is no longer subject to Gross Philippine Billings tax as ruled in the assailed Court of Tax Appeals Decision "does not render it *ipso facto* subject to 32% income tax on taxable income as a resident foreign corporation."[33] Petitioner argues that to impose the 32% regular corporate income tax on its income would violate the Philippine government's covenant under Article VIII of the Republic of the Philippines-Canada Tax Treaty not to impose a tax higher than 1½% of the carrier's gross revenue derived from sources within the Philippines.[34] It would also allegedly result in "inequitable tax treatment of on-line and off-line international air carriers[.]"[35]

Also, petitioner states that the income it derived from the sale of airline tickets in the Philippines was income from services and not income from sales of personal property.[36] Petitioner cites the deliberations of the Bicameral Conference Committee on House Bill No. 9077 (which eventually became the 1997 National Internal Revenue Code), particularly Senator Juan Ponce Enrile's statement,[37] to reveal the "legislative intent to treat

---

[31] *Rollo*, pp. 22, Petition, and 307, Air Canada's Memorandum.

[32] *Id*.

[33] *Id*. at 28, Petition.

[34] *Id*. at 23-24, Petition, and 315, Air Canada's Memorandum.

[35] *Id*. at 319, Air Canada's Memorandum.

[36] *Id*. at 28-29, Petition.

[37] *Id*. at 29. According to Senator Juan Ponce Enrile, "the gross Philippine billings of international air carriers must refer to flown revenue because this

the revenue derived from air carriage as income from services, and that the carriage of passenger or cargo as the activity that generates the income."[38] Accordingly, applying the principle on the situs of taxation in taxation of services, petitioner claims that its income derived "from services rendered outside the Philippines [was] not subject to Philippine income taxation."[39]

Petitioner further contends that by the appointment of Aerotel as its general sales agent, petitioner cannot be considered to have a "permanent establishment"[40] in the Philippines pursuant to Article V(6) of the Republic of the Philippines-Canada Tax Treaty.[41] It points out that Aerotel is an "independent general sales agent that acts as such for . . . other international airline companies in the ordinary course of its business."[42] Aerotel sells passage tickets on behalf of petitioner and receives a commission for its services.[43] Petitioner states that even the Bureau of Internal Revenue—through VAT Ruling No. 003-04 dated February 14, 2004—has conceded that an offline international air carrier, having no flight operations to and from the Philippines, is not deemed engaged in business in the Philippines by merely appointing a general sales agent.[44] Finally, petitioner maintains that its "claim for refund of erroneously paid Gross Philippine Billings cannot be denied on the ground that [it] is subject to income tax under Section 28 (A) (1)"[45]

---

is an income from services and this will make the determination of the tax base a lot easier by following the same rule in determining the liability of the carrier for common carrier's tax." (Minutes of the Bicameral Conference Committee on House Bill No. 9077 [Comprehensive Tax Reform Program], 10 October 1997, pp. 19-20).

[38] *Id*.

[39] *Id*. at 313, Air Canada's Memorandum.

[40] *Id*. at 35, Petition.

[41] *Id*. at 35, Petition, and 322, Air Canada's Memorandum.

[42] *Id*. at 321, Air Canada's Memorandum.

[43] *Id*. at 35, Petition.

[44] *Id*. at 35-36, Petition, and 322-323, Air Canada's Memorandum.

[45] *Id*. at 37, Petition, and 325, Air Canada's Memorandum.

since it has not been assessed at all by the Bureau of Internal Revenue for any income tax liability.[46]

On the other hand, respondent maintains that petitioner is subject to the 32% corporate income tax as a resident foreign corporation doing business in the Philippines. Petitioner's total payment of ₱5,185,676.77 allegedly shows that petitioner was earning a sizable income from the sale of its plane tickets within the Philippines during the relevant period.[47] Respondent further points out that this court in *Commissioner of Internal Revenue v. American Airlines, Inc.*,[48] which in turn cited the cases involving the British Overseas Airways Corporation and Air India, had already settled that "foreign airline companies which sold tickets in the Philippines through their local agents . . . [are] considered resident foreign corporations engaged in trade or business in the country."[49] It also cites Revenue Regulations No. 6-78 dated April 25, 1978, which defined the phrase "doing business in the Philippines" as including "regular sale of tickets in the Philippines by off-line international airlines either by themselves or through their agents."[50]

Respondent further contends that petitioner is not entitled to its claim for refund because the amount of ₱5,185,676.77 it paid as tax from the third quarter of 2000 to the second quarter of 2001 was still short of the 32% income tax due for the period.[51] Petitioner cannot allegedly claim good faith in its failure to pay the right amount of tax since the National Internal Revenue Code became operative on January 1, 1998 and by 2000, petitioner should have already been aware of the implications of Section 28(A)(3) and the decided cases of this court's ruling

---

[46] *Id*. at 37, Petition, and 325-326, Air Canada's Memorandum.

[47] *Id*. at 256, Commissioner of Internal Revenue's Comment.

[48] 259 Phil. 757 (1989) [Per *J*. Regalado, Second Division].

[49] *Rollo*, p. 258, Commissioner of Internal Revenue's Comment.

[50] *Id*. at 257.

[51] *Id*. at 260.

on the taxability of offline international carriers selling passage tickets in the Philippines.[52]

I

At the outset, we affirm the Court of Tax Appeals' ruling that petitioner, as an offline international carrier with no landing rights in the Philippines, is not liable to tax on Gross Philippine Billings under Section 28(A)(3) of the 1997 National Internal Revenue Code:

> **SEC. 28. Rates of Income Tax on Foreign Corporations. –**
>
> (A) *Tax on Resident Foreign Corporations*. -
>
> . . . .
>
> (3) International Carrier. - *An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder*:
>
> (a) International Air Carrier. - *'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document:* Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings. (Emphasis supplied)

Under the foregoing provision, the tax attaches only when the carriage of persons, excess baggage, cargo, and mail originated from the Philippines in a continuous and

---

[52] *Id*. at 260-261.

uninterrupted flight, regardless of where the passage documents were sold.

Not having flights to and from the Philippines, petitioner is clearly not liable for the Gross Philippine Billings tax.

II

Petitioner, an offline carrier, is a resident foreign corporation for income tax purposes. Petitioner falls within the definition of resident foreign corporation under Section 28(A)(1) of the 1997 National Internal Revenue Code, thus, it may be subject to 32%[53] tax on its taxable income:

> **SEC. 28. Rates of Income Tax on Foreign Corporations. -**
>
> (A) *Tax on Resident Foreign Corporations.* -
>
> (1) In General. - *Except as otherwise provided in this Code*, ***a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines***: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%[54]). (Emphasis supplied)

The definition of "resident foreign corporation" has not substantially changed throughout the amendments of the National Internal Revenue Code. All versions refer to "a foreign corporation engaged in trade or business within the Philippines."

---

[53] Pursuant to Rep. Act No. 9337 (2005), the rate is reduced to 30% beginning January 1, 2009.

[54] Pursuant to Rep. Act No. 9337 (2005), the rate is reduced to 30% beginning January 1, 2009.

Commonwealth Act No. 466, known as the National Internal Revenue Code and approved on June 15, 1939, defined "resident foreign corporation" as applying to "a foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein."[55]

Section 24(b)(2) of the National Internal Revenue Code, as amended by Republic Act No. 6110, approved on August 4, 1969, reads:

> Sec. 24. Rates of tax on corporations. — . . .
>
> (b) Tax on foreign corporations. — . . .
>
> (2) Resident corporations. — A corporation organized, authorized, or existing under the laws of any foreign country, except a foreign life insurance company, *engaged in trade or business within the Philippines*, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines.[56] (Emphasis supplied)

Presidential Decree No. 1158-A took effect on June 3, 1977 amending certain sections of the 1939 National Internal Revenue Code. Section 24(b)(2) on foreign resident corporations was amended, but it still provides that "[a] corporation organized, authorized, or existing under the laws of any foreign country, *engaged in trade or business within the Philippines,* shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines[.]"[57]

As early as 1987, this court in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*[58] declared

---

[55] Com. Act No. 466 (1939), Sec. 84(g).

[56] *Commissioner of Internal Revenue v. British Overseas Airways Corporation*, 233 Phil. 406, 421 (1987) [Per *J*. Melencio-Herrera, *En Banc*], *citing* TAX CODE, Sec. 24(b)(2), as amended by Rep. Act No. 6110 (1969).

[57] Pres. Decree No. 1158-A (1977), Sec. 1.

[58] 233 Phil. 406 (1987) [Per *J*. Melencio-Herrera, *En Banc*], *cited in Commissioner of Internal Revenue v. Air India*, 241 Phil. 689, 694-696 (1988) [Per *J*. Gancayco, First Division].

British Overseas Airways Corporation, an international air carrier with no landing rights in the Philippines, as a resident foreign corporation engaged in business in the Philippines through its local sales agent that sold and issued tickets for the airline company.[59] This court discussed that:

> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a ***continuity of commercial dealings and arrangements***, and contemplates, to that extent, ***the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization***. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.["]
>
> BOAC, during the periods covered by the subject-assessments, maintained a general sales agent in the Philippines. That general sales agent, from 1959 to 1971, "was engaged in (1) selling and issuing tickets; (2) breaking down the whole trip into series of trips — each trip in the series corresponding to a different airline company; (3) receiving the fare from the whole trip; and (4) consequently allocating to the various airline companies on the basis of their participation in the services rendered through the mode of interline settlement as prescribed by Article VI of the Resolution No. 850 of the IATA Agreement." Those activities were in exercise of the functions which are normally incident to, and are in progressive pursuit of, the purpose and object of its organization as an international air carrier. In fact, the regular sale of tickets, its main activity, is the very lifeblood of the airline business, the generation of sales being the paramount objective. There should be no doubt then that BOAC was "engaged in" business in the Philippines through a local agent during the period covered by the assessments. Accordingly, it is a resident foreign corporation subject to tax upon its total net income received in the preceding taxable year from all sources within the Philippines.[60] (Emphasis supplied, citations omitted)

---

[59] *Id.* at 420-421.

[60] *Id.*

Republic Act No. 7042 or the Foreign Investments Act of 1991 also provides guidance with its definition of "doing business" with regard to foreign corporations. Section 3(d) of the law enumerates the activities that constitute doing business:

> d. ***the phrase "doing business" shall include*** soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and ***any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization***: *Provided, however,* That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.][61] (Emphasis supplied)

While Section 3(d) above states that "appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account" is not considered as "doing business," the Implementing Rules and Regulations of Republic Act No. 7042 clarifies that "doing business" includes "*appointing representatives or distributors,* ***operating under full control of the foreign corporation***, domiciled in the Philippines or who in any calendar year stay

---

[61] Rep. Act No. 7042 (1991), Sec. 3(d).

in the country for a period or periods totaling one hundred eighty (180) days or more[.]"[62]

An offline carrier is "any foreign air carrier not certificated by the [Civil Aeronautics] Board, but who maintains office or *who has designated or appointed agents or employees in the Philippines*, who sells or offers for sale any air transportation in behalf of said foreign air carrier and/or others, or negotiate for, or holds itself out by solicitation, advertisement, or otherwise sells, provides, furnishes, contracts, or arranges for such transportation."[63]

"Anyone desiring to engage in the activities of an off-line carrier [must] apply to the [Civil Aeronautics] Board for such authority."[64] Each offline carrier must file with the Civil Aeronautics Board a monthly report containing information on the tickets sold, such as the origin and destination of the passengers, carriers involved, and commissions received.[65]

Petitioner is undoubtedly "doing business" or "engaged in trade or business" in the Philippines.

Aerotel performs acts or works or exercises functions that are incidental and beneficial to the purpose of petitioner's business. The activities of Aerotel bring direct receipts or profits to petitioner.[66] There is nothing on record to show that Aerotel solicited orders alone and for its own account and without interference from, let alone direction of, petitioner. On the

---

[62] Implementing Rules and Regulations of Rep. Act No. 7042 (1991), Sec. 1(f).

[63] Civil Aeronautics Board Economic Regulation No. 4, chap. I, Sec. 2(b).

[64] Civil Aeronautics Board Economic Regulation No. 4, chap. III, Sec. 26.

[65] Civil Aeronautics Board Economic Regulation No. 4, chap. III, Sec. 30.

[66] *Cf. Cargill, Inc. v. Intra Strata Assurance Corporation*, 629 Phil. 320, 332 (2010) [Per *J*. Carpio, Second Division], *citing National Sugar Trading Corporation v. Court of Appeals*, 316 Phil. 562, 568-569 (1995) [Per *J*. Quiason, First Division].

contrary, Aerotel cannot "enter into any contract on behalf of [petitioner Air Canada] without the express written consent of [the latter,]"[67] and it must perform its functions according to the standards required by petitioner.[68] Through Aerotel, petitioner is able to engage in an economic activity in the Philippines.

Further, petitioner was issued by the Civil Aeronautics Board an authority to operate as an offline carrier in the Philippines for a period of five years, or from April 24, 2000 until April 24, 2005.[69]

Petitioner is, therefore, a resident foreign corporation that is taxable on its income derived from sources within the Philippines. Petitioner's income from sale of airline tickets, through Aerotel, is income realized from the pursuit of its business activities in the Philippines.

III

However, the application of the regular 32% tax rate under Section 28(A)(1) of the 1997 National Internal Revenue Code must consider the existence of an effective tax treaty between the Philippines and the home country of the foreign air carrier.

In the earlier case of *South African Airways v. Commissioner of Internal Revenue*,[70] this court held that Section 28(A)(3)(a) does not categorically exempt all international air carriers from the coverage of Section 28(A)(1). Thus, if Section 28(A)(3)(a) is applicable to a taxpayer, then the general rule under Section 28(A)(1) does not apply. If, however, Section 28(A)(3)(a) does

---

[67] *Rollo*, p. 122, Passenger General Sales Agency Agreement Between Air Canada and Aerotel Ltd., Corp.

[68] *Id*. at 126.

[69] *Id*. at 78, Civil Aeronautics Board Executive Director Guia Martinez's letter to Aerotel Limited Corporation.

[70] 626 Phil. 566 (2010) [Per *J*. Velasco, Jr., Third Division]. The case was also cited in *United Airlines, Inc. v. Commissioner of Internal Revenue*, 646 Phil. 184, 193 (2010) [Per *J*. Villarama, Jr., Third Division].

not apply, an international air carrier would be liable for the tax under Section 28(A)(1).[71]

This court in *South African Airways* declared that the correct interpretation of these provisions is that: "international air carrier[s] maintain[ing] flights to and from the Philippines . . . shall be taxed at the rate of 2½% of its Gross Philippine Billings[;] while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from other activities in the country [like sale of airline tickets] will be taxed at the rate of 32% of such [taxable] income."[72]

In this case, there is a tax treaty that must be taken into consideration to determine the proper tax rate.

A tax treaty is an agreement entered into between sovereign states "for purposes of eliminating double taxation on income and capital, preventing fiscal evasion, promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals."[73] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc*.[74] explained the purpose of a tax treaty:

> The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.
>
> The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed

---

[71] *South African Airways v. Commissioner of Internal Revenue*, 626 Phil. 566, 574-575 (2010) [Per *J*. Velasco, Jr., Third Division].

[72] *Id*. at 575.

[73] *J*. Paras, Dissenting Opinion in *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, G.R. No. 66838, December 2, 1991, 204 SCRA 377, 411 [Per *J*. Feliciano, *En Banc*].

[74] 368 Phil. 388 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.[75] (Emphasis in the original, citations omitted)

Observance of any treaty obligation binding upon the government of the Philippines is anchored on the constitutional provision that the Philippines "adopts the generally accepted principles of international law as part of the law of the land[.]"[76] *Pacta sunt servanda* is a fundamental international law principle that requires agreeing parties to comply with their treaty obligations in good faith.[77]

Hence, the application of the provisions of the National Internal Revenue Code must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.

In *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[78] this court stressed the binding effects of

---

[75] *Id*. at 404-405.

[76] CONST., Art. II, Sec. 2.

[77] *Tañada v. Angara*, 338 Phil. 546, 591-592 (1997) [Per J. Panganiban, En Banc]: "[W]hile sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* — international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. . . . A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken." (Citations omitted)

[78] G.R. No. 188550, August 28, 2013, 704 SCRA 216 [Per *C.J.* Sereno, First Division]. Also cited in *CBK Power Company Limited v. Commissioner*

tax treaties. It dealt with the issue of "whether the failure to strictly comply with [Revenue Memorandum Order] RMO No. 1-2000[79] will deprive persons or corporations of the benefit of a tax treaty."[80] Upholding the tax treaty over the administrative issuance, this court reasoned thus:

> *Our Constitution provides for adherence to the general principles of international law as* ***part of the law of the land****. The time-honored international principle of pacta sunt servanda demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly,* ***treaties have the force and effect of law in this jurisdiction****.*

Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions." *CIR v. S.C. Johnson and Son, Inc.* further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a

---

*of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/193383-84.pdf> 7-8 [Per *J.* Perlas-Bernabe, First Division].

[79] *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 188550, August 28, 2013, 704 SCRA 216, 223 [Per *C.J.* Sereno, First Division]. The Bureau of Internal Revenue "issued RMO No. 1-2000, which requires that any availment of the tax treaty relief must be preceded by an application with ITAD at least 15 days before the transaction. The Order was issued to streamline the processing of the application of tax treaty relief in order to improve efficiency and service to the taxpayers. Further, it also aims to prevent the consequences of an erroneous interpretation and/or application of the treaty provisions (*i.e.*, filing a claim for a tax refund/credit for the overpayment of taxes or for deficiency tax liabilities for underpayment)." (Citation omitted)

[80] *Id.*

fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate." Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

"*A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken." Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto.* The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

. . . .

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.[81] (Emphasis supplied, citations omitted)

---

[81] *Id*. at 227-228.

On March 11, 1976, the representatives[82] for the government of the Republic of the Philippines and for the government of Canada signed the Convention between the Philippines and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Republic of the Philippines-Canada Tax Treaty). This treaty entered into force on December 21, 1977.

Article V[83] of the Republic of the Philippines-Canada Tax

---

[82] *Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, March 11, 1976 (1977) <http://www.bir.gov.ph/images/bir_files/international_tax_affairs/Canada%20treaty.pdf> (visited July 21, 2015). Cesar Virata signed for the government of the Republic of the Philippines, while Donald Jamieson signed for the government of Canada.

[83] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. V provides:

Article V

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
   a) a place of management;
   b) a branch;
   c) an office;
   d) a factory;
   e) a workshop;
   f) a mine, quarry or other place of extraction of natural resources;
   g) a building or construction site or supervisory activities in connection therewith, where such activities continue for a period more than six months;
   h) an assembly or installation project which exists for more than three months;
   i) premises used as a sales outlet;
   j) a warehouse, in relation to a person providing storage facilities for others.

Treaty defines "permanent establishment" as a "fixed place of

---

3. The term "permanent establishment" shall not be deemed to include:
   a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
   e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. *A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned State if:*
   *a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or*
   b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. An insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 6.

6. *An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.*

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other. (Emphasis supplied)

business in which the business of the enterprise is wholly or partly carried on."[84]

Even though there is no fixed place of business, an enterprise of a Contracting State is deemed to have a permanent establishment in the other Contracting State if under certain conditions there is a person acting for it.

Specifically, Article V(4) of the Republic of the Philippines-Canada Tax Treaty states that "[a] person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned State if . . . he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise[.]" The provision seems to refer to one who would be considered an agent under Article 1868[85] of the Civil Code of the Philippines.

On the other hand, Article V(6) provides that "[a]n enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or ***any other agent of an independent status***, where such persons are acting in the ordinary course of their business."

Considering Article XV[86] of the same Treaty, which covers dependent personal services, the term "dependent" would imply

---

[84] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. V(1).

[85] CIVIL CODE, Art. 1868 provides:

Article 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

[86] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. XV provides:

a relationship between the principal and the agent that is akin to an employer-employee relationship.

Thus, an agent may be considered to be *dependent* on the principal where the latter exercises comprehensive control and detailed instructions over the means and results of the activities of the agent.[87]

---

Article XV

Dependent Personal Services

1. Subject to the provisions of Articles XVI, XVIII and XIX, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and either
   a) the remuneration earned in the other Contracting State in the calendar year concerned does not exceed two thousand five hundred Canadian dollars ($2,500) or its equivalent in Philippine pesos or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States; or
   b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of employment as a member of the regular crew or complement of a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

[87] Among the four elements of an employer-employee relationship (*i.e.*, (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control of the employees conduct), the control test is regarded as the most important. Under this test, an employer-employee relationship exists if the employer has reserved the right to control the employee not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished. *See Fuji Television Network, Inc. v. Espiritu*, G.R. Nos. 204944-45, December

Section 3 of Republic Act No. 776, as amended, also known as The Civil Aeronautics Act of the Philippines, defines a general sales agent as "a person, not a bonafide employee of an air carrier, who pursuant to an authority from an airline, by itself or through an agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for, such air transportation."[88] General sales agents and their property, property rights, equipment, facilities, and franchise are subject to the regulation and control of the Civil Aeronautics Board.[89] A permit or authorization issued by the Civil Aeronautics Board is required before a general sales agent may engage in such an activity.[90]

Through the appointment of Aerotel as its local sales agent, petitioner is deemed to have created a "permanent establishment" in the Philippines as defined under the Republic of the Philippines-Canada Tax Treaty.

Petitioner appointed Aerotel as its passenger general sales agent to perform the sale of transportation on petitioner and

---

3, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/204944-45.pdf> 19-20 [Per *J*. Leonen, Second Division]; *Royale Homes Marketing Corporation v. Alcantara*, G.R. No. 195190, July 28, 2014, 731 SCRA 147, 162 [Per *J*. Del Castillo, Second Division]; *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*,655 Phil. 384, 400-401 (2011) [Per *J*. Brion, *En Banc*]; *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594-595 [Per *J*. Carpio, First Division]; *Dr. Sara v. Agarrado*, 248 Phil. 847, 851 (1988) [Per *C.J*. Fernan, Third Division], and *Investment Planning Corporation of the Philippines v. Social Security System*, 129 Phil. 143, 147 (1967) [Per *J*. Makalintal, *En Banc*], *cited in Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 259 Phil. 65, 72 (1989) [Per *J*. Narvasa, First Division].

[88] Rep. Act No. 776 (1952), Sec. 1(jj), as amended by Pres. Decree No. 1462 (1978), Sec. 1.

[89] Rep. Act No. 776 (1952), Sec. 10(A), as amended by Pres. Decree No. 1462 (1978), Sec. 6.

[90] Rep. Act No. 776 (1952), Sec. 11, as amended by Pres. Decree No. 1462 (1978), Sec. 7.

handle reservations, appointment, and supervision of International Air Transport Association-approved and petitioner-approved sales agents, including the following services:

**ARTICLE 7**
**GSA SERVICES**

The GSA [Aerotel Ltd., Corp.] shall perform on behalf of AC [Air Canada] the following services:

a) Be the fiduciary of AC and in such capacity act solely and entirely for the benefit of AC in every matter relating to this Agreement;

. . . .

c) Promotion of passenger transportation on AC;

. . . .

e) Without the need for endorsement by AC, arrange for the reissuance, in the Territory of the GSA [Philippines], of traffic documents issued by AC outside the said territory of the GSA [Philippines], as required by the passenger(s);

. . . .

h) Distribution among passenger sales agents and display of timetables, fare sheets, tariffs and publicity material provided by AC in accordance with the reasonable requirements of AC;

. . . .

j) Distribution of official press releases provided by AC to media and reference of any press or public relations inquiries to AC;

. . . .

o) Submission for AC's approval, of an annual written sales plan on or before a date to be determined by AC and in a form acceptable to AC;

. . . .

q) Submission of proposals for AC's approval of passenger sales agent incentive plans at a reasonable time in advance of proposed implementation.

r) Provision of assistance on request, in its relations with Governmental and other authorities, offices and agencies in the Territory [Philippines].

. . . .

u) Follow AC guidelines for the handling of baggage claims and customer complaints and, unless otherwise stated in the guidelines, refer all such claims and complaints to AC.[91]

Under the terms of the Passenger General Sales Agency Agreement, Aerotel will "provide at its own expense and acceptable to [petitioner Air Canada], adequate and suitable premises, qualified staff, equipment, documentation, facilities and supervision and in consideration of the remuneration and expenses payable[,] [will] defray all costs and expenses of and incidental to the Agency."[92] "[I]t is the sole employer of its employees and . . . is responsible for [their] actions . . . or those of any subcontractor."[93] In remuneration for its services, Aerotel would be paid by petitioner a commission on sales of transportation plus override commission on flown revenues.[94] Aerotel would also be reimbursed "for all authorized expenses supported by original supplier invoices."[95]

Aerotel is required to keep "separate books and records of account, including supporting documents, regarding all transactions at, through or in any way connected with [petitioner Air Canada] business."[96]

"If representing more than one carrier, [Aerotel must] represent all carriers in an unbiased way."[97] Aerotel cannot "accept additional appointments as General Sales Agent of any other carrier without the prior written consent of [petitioner Air Canada]."[98]

---

[91] *Rollo*, pp. 124-125, Passenger General Sales Agency Agreement Between Air Canada and Aerotel Ltd., Corp.

[92] *Id*. at 126.

[93] *Id*. at 122.

[94] *Id*. at 127.

[95] *Id*. at 128.

[96] *Id*. at 130.

[97] *Id*. at 122.

[98] *Id*.

The Passenger General Sales Agency Agreement "may be terminated by either party without cause upon [no] less than 60 days' prior notice in writing[.]"[99] In case of breach of any provisions of the Agreement, petitioner may require Aerotel "to cure the breach in 30 days failing which [petitioner Air Canada] may terminate [the] Agreement[.]"[100]

The following terms are indicative of Aerotel's dependent status:

First, Aerotel must give petitioner written notice "within 7 days of the date [it] acquires or takes control of another entity or merges with or is acquired or controlled by another person or entity[.]"[101] Except with the written consent of petitioner, Aerotel must not acquire a substantial interest in the ownership, management, or profits of a passenger sales agent affiliated with the International Air Transport Association or a non-affiliated passenger sales agent nor shall an affiliated passenger sales agent acquire a substantial interest in Aerotel as to influence its commercial policy and/or management decisions.[102] Aerotel must also provide petitioner "with a report on any interests held by [it], its owners, directors, officers, employees and their immediate families in companies and other entities in the aviation industry or . . . industries related to it[.]"[103] Petitioner may require that any interest be divested within a set period of time.[104]

Second, in carrying out the services, Aerotel cannot enter into any contract on behalf of petitioner without the express written consent of the latter;[105] it must act according to the

---

[99] *Id*. at 137.

[100] *Id*.

[101] *Id*. at 122.

[102] *Id*. at 123.

[103] *Id*.

[104] *Id*.

[105] *Id*. at 122.

standards required by petitioner;[106] "follow the terms and provisions of the [petitioner Air Canada] GSA Manual [and all] written instructions of [petitioner Air Canada;]"[107] and "[i]n the absence of an applicable provision in the Manual or instructions, [Aerotel must] carry out its functions in accordance with [its own] standard practices and procedures[.]"[108]

Third, Aerotel must only "issue traffic documents approved by [petitioner Air Canada] for all transportation over [its] services[.]"[109] All use of petitioner's name, logo, and marks must be with the written consent of petitioner and according to petitioner's corporate standards and guidelines set out in the Manual.[110]

Fourth, all claims, liabilities, fines, and expenses arising from or in connection with the transportation sold by Aerotel are for the account of petitioner, except in the case of negligence of Aerotel.[111]

Aerotel is a *dependent* agent of petitioner pursuant to the terms of the Passenger General Sales Agency Agreement executed between the parties. It has the authority or power to conclude contracts or bind petitioner to contracts entered into in the Philippines. A third-party liability on contracts of Aerotel is to petitioner as the principal, and not to Aerotel, and liability to such third party is enforceable against petitioner. While Aerotel maintains a certain independence and its activities may not be devoted wholly to petitioner, nonetheless, when representing petitioner pursuant to the Agreement, it must carry out its functions solely for the benefit of petitioner and according to

---

[106] *Id*. at 126.

[107] *Id*.

[108] *Id*.

[109] *Id*. at 129.

[110] *Id*. at 131.

[111] *Id*. at 132.

the latter's Manual and written instructions. Aerotel is required to submit its annual sales plan for petitioner's approval.

In essence, Aerotel extends to the Philippines the transportation business of petitioner. It is a conduit or outlet through which petitioner's airline tickets are sold.[112]

Under Article VII (*Business Profits*) of the Republic of the Philippines-Canada Tax Treaty, the "business profits" of an enterprise of a Contracting State is "taxable only in that State[,] unless the enterprise carries on business in the other Contracting State through a permanent establishment[.]"[113] Thus, income attributable to Aerotel or from business activities effected by

---

[112] *Cf. Steelcase, Inc. v. Design International Selections, Inc.*, G.R. No. 171995, April 18, 2012, 670 SCRA 64 [Per *J.* Mendoza, Third Division]. This court held that "the appointment of a distributor in the Philippines is not sufficient to constitute 'doing business' unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances." (*Id*. at 74, citations omitted) This court found that Design International Selections, Inc. "was an independent contractor, distributing various products of Steelcase and of other companies, acting in its own name and for its own account." (*Id*. at 75) "As a result, Steelcase cannot be considered to be doing business in the Philippines by its act of appointing a distributor as it falls under one of the exceptions under R.A. No. 7042." (*Id*. at 77).

[113] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. VII provides:

> Article VII
>
> Business Profits
>
> 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
>
> a) that permanent establishment; or

petitioner through Aerotel may be taxed in the Philippines. However, pursuant to the last paragraph[114] of Article VII in relation to Article VIII[115] (*Shipping and Air Transport*) of the

---

b) sales of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those affected, through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then, the provisions of those Articles shall not be affected by the provisions of this Article.

[114] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. VII, par. 6 provides:

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then, the provisions of those Articles shall not be affected by the provisions of this Article.

[115] Convention with Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Art. VIII provides:

Article VIII

Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft shall be taxable only in that State.

same Treaty, the tax imposed on income derived from the operation of ships or aircraft in international traffic should not exceed 1½% of gross revenues derived from Philippine sources.

IV

While petitioner is taxable as a resident foreign corporation under Section 28(A)(1) of the 1997 National Internal Revenue Code on its taxable income[116] from sale of airline tickets in the Philippines, *it could only be taxed at a maximum of 1½% of gross revenues,* pursuant to Article VIII of the Republic of the Philippines-Canada Tax Treaty that applies to petitioner as a "foreign corporation organized and existing under the laws of Canada[.]"[117]

Tax treaties form part of the law of the land,[118] and jurisprudence has applied the statutory construction principle that specific laws prevail over general ones.[119]

---

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed the lesser of
   a) one and one-half per cent of the gross revenues derived from sources in that State; and
   b) the lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State.

[116] TAX CODE, Sec. 31 provides:

SEC. 31. Taxable Income Defined. – The term 'taxable income' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

[117] *Rollo*, p. 59, Court of Tax Appeals *En Banc* Decision.

[118] CONST., Art. II, Sec. 2.

[119] *Lex specialis derogat generali*; *See BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, 396 Phil. 623, 652 (2000) [Per *J.* Buena, *En Banc*], *citing Manila Railroad Co. v Collector of Customs*, 52 Phil. 950, 952 (1929) [Per *J.* Malcolm, *En Banc*] and *Leveriza v. Intermediate Appellate Court*, 241 Phil. 285, 299 (1988) [Per *J.* Bidin, Third Division], *cited in Republic v. Sandiganbayan, First Division*, 255 Phil. 71, 83-84 (1989) [Per *J.* Gutierrez, Jr., *En Banc*].

The Republic of the Philippines-Canada Tax Treaty was ratified on December 21, 1977 and became valid and effective on that date. On the other hand, the applicable provisions[120] relating to the taxability of resident foreign corporations and the rate of such tax found in the National Internal Revenue Code became effective on January 1, 1998.[121] Ordinarily, the later provision governs over the earlier one.[122] In this case, however, the provisions of the Republic of the Philippines-Canada Tax Treaty are more specific than the provisions found in the National Internal Revenue Code.

These rules of interpretation apply even though one of the sources is a treaty and not simply a statute.

Article VII, Section 21 of the Constitution provides:

> SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

This provision states the second of two ways through which international obligations become binding. Article II, Section 2 of the Constitution deals with international obligations that are incorporated, while Article VII, Section 21 deals with international obligations that become binding through ratification.

"Valid and effective" means that treaty provisions that define rights and duties as well as definite prestations have effects equivalent to a statute. Thus, these specific treaty provisions may amend statutory provisions. Statutory provisions may also amend these types of treaty obligations.

---

[120] TAX CODE, Sec. 28(A)(1), as amended by Rep. Act No. 9337 (2005), Sec. 2.

[121] *See* Bureau of Internal Revenue website <http://www.bir.gov.ph/index.php/tax-code.html> (visited July 21, 2015).

[122] *See Herman v. Radio Corporation of the Philippines*, 50 Phil. 490, 498 (1927) [Per *J*. Street, *En Banc*] in that the later legislative expression prevails when two statutes apply.

We only deal here with bilateral treaty state obligations that are not international obligations *erga omnes*. We are also not required to rule in this case on the effect of international customary norms especially those with *jus cogens* character.

The second paragraph of Article VIII states that "profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged *shall not exceed* the lesser of a) one and one-half per cent of the gross revenues derived from sources in that State; and b) the lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State."

The Agreement between the government of the Republic of the Philippines and the government of Canada on Air Transport, entered into on January 14, 1997, reiterates the effectivity of Article VIII of the Republic of the Philippines-Canada Tax Treaty:

> ARTICLE XVI
> (Taxation)
>
> The Contracting Parties shall act in accordance with the provisions of Article VIII of the Convention between the Philippines and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Manila on March 31, 1976 and entered into force on December 21, 1977, and any amendments thereto, in respect of the operation of aircraft in international traffic.[123]

Petitioner's income from sale of ticket for international carriage of passenger is income derived from international operation of aircraft. The sale of tickets is closely related to the international operation of aircraft that it is considered incidental thereto.

---

[123] *Agreement Between the Government of Canada and the Government of the Republic of the Philippines on Air Transport,* Global Affairs Canada <http://www.treaty-accord.gc.ca/text-texte.aspx?id=100250> (visited July 21, 2015).

"[B]y reason of our bilateral negotiations with [Canada], we have agreed to have our right to tax limited to a certain extent[.]"[124] Thus, we are bound to extend to a Canadian air carrier doing business in the Philippines through a local sales agent the benefit of a lower tax equivalent to 1½% on business profits derived from sale of international air transportation.

V

Finally, we reject petitioner's contention that the Court of Tax Appeals erred in denying its claim for refund of erroneously paid Gross Philippine Billings tax on the ground that it is subject to income tax under Section 28(A)(1) of the National Internal Revenue Code because (a) it has not been assessed at all by the Bureau of Internal Revenue for any income tax liability;[125] and (b) internal revenue taxes cannot be the subject of set-off or compensation,[126] citing *Republic v. Mambulao Lumber Co., et al.*[127] and *Francia v. Intermediate Appellate Court*.[128]

In *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*,[129] we have ruled that "[i]n an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid."[130] The determination of the proper category of tax that should have been paid is incidental and necessary to resolve the issue of whether a refund should be granted.[131] Thus:

---

[124] *Marubeni Corporation v. Commissioner of Internal Revenue*, 258 Phil. 295, 306 (1989) [Per *C.J.* Fernan, Third Division].

[125] *Rollo*, pp. 325-326, Air Canada's Memorandum.

[126] *Id.* at 323-325.

[127] 114 Phil. 549, 554-555 (1962) [Per *J.* Barrera, *En Banc*].

[128] 245 Phil. 717, 722-723 (1988) [Per *J.* Gutierrez, Jr., Third Division].

[129] G.R. No. 175410, November 12, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/175410.pdf> [Per *J.* Leonen, Second Division].

[130] *Id.* at 1.

[131] *Id.*

Petitioner argued that the Court of Tax Appeals had no jurisdiction to subject it to 6% capital gains tax or other taxes at the first instance. The Court of Tax Appeals has no power to make an assessment.

As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.

In *South African Airways v. Commissioner of Internal Revenue,* South African Airways claimed for refund of its erroneously paid 2½% taxes on its gross Philippine billings. This court did not immediately grant South African's claim for refund. This is because although this court found that South African Airways was not subject to the 2½% tax on its gross Philippine billings, this court also found that it was subject to 32% tax on its taxable income.

In this case, petitioner's claim that it erroneously paid the 5% final tax is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in *South African Airways,* petitioner's request for refund can neither be granted nor denied outright without such determination.

If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.

Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.[132]

Hence, the Court of Tax Appeals properly denied petitioner's claim for refund of allegedly erroneously paid tax on its Gross Philippine Billings, on the ground that it was liable instead for the regular 32% tax on its taxable income received from sources within the Philippines. Its determination of petitioner's liability for the 32% regular income tax was made merely for the purpose of ascertaining petitioner's entitlement to a tax refund and not for imposing any deficiency tax.

In this regard, the matter of set-off raised by petitioner is not an issue. Besides, the cases cited are based on different circumstances. In both cited cases,[133] the taxpayer claimed that his (its) tax liability was off-set by his (its) claim against the government.

Specifically, in *Republic v. Mambulao Lumber Co., et al.*, Mambulao Lumber contended that the amounts it paid to the government as reforestation charges from 1947 to 1956, not having been used in the reforestation of the area covered by its license, may be set off or applied to the payment of forest charges still due and owing from it.[134] Rejecting Mambulao's claim of legal compensation, this court ruled:

---

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

[133] *Republic v. Mambulao Lumber Co., et al.*, 114 Phil. 549, 552 (1962) [Per *J.* Barrera, *En Banc*] and *Francia v. Intermediate Appellate Court*, 245 Phil. 717, 722 (1988) [Per *J.* Gutierrez, Jr., Third Division].

[134] *Republic v. Mambulao Lumber Co., et al.*, 114 Phil. 549, 552 (1962) [Per *J.* Barrera, *En Banc*].

[A]ppellant and appellee are not mutually creditors and debtors of each other. Consequently, the law on compensation is inapplicable. On this point, the trial court correctly observed:

> Under Article 1278, NCC, compensation should take place when two persons in their own right are creditors and debtors of each other. *With respect to the forest charges which the defendant Mambulao Lumber Company has paid to the government, they are in the coffers of the government as taxes collected, and the government does not owe anything to defendant Mambulao Lumber Company. So, it is crystal clear that the Republic of the Philippines and the Mambulao Lumber Company are not creditors and debtors of each other, because compensation refers to mutual debts.* * * *.

And the weight of authority is to the effect that internal revenue taxes, such as the forest charges in question, can not be the subject of set-off or compensation.

A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they a proper subject of recoupment since they do not arise out of the contract or transaction sued on. * * *. (80 C.J.S. 73–74.)

The general rule, based on grounds of public policy is well-settled that no set-off is admissible against demands for taxes levied for general or local governmental purposes. The reason on which the general rule is based, is that taxes are not in the nature of contracts between the party and party but grow out of a duty to, and are the positive acts of the government, to the making and enforcing of which, the personal consent of individual taxpayers is not required. * * * If the taxpayer can properly refuse to pay his tax when called upon by the Collector, because he has a claim against the governmental body which is not included in the tax levy, it is plain that some legitimate and necessary expenditure must be curtailed. If the taxpayer's claim is disputed, the collection of the tax must await and abide the result of a lawsuit, and meanwhile the financial affairs of the government will be thrown into great confusion. (47 Am. Jur. 766–767.)[135] (Emphasis supplied)

---

[135] *Id*. at 554-555.

In *Francia*, this court did not allow legal compensation since not all requisites of legal compensation provided under Article 1279 were present.[136] In that case, a portion of Francia's property in Pasay was expropriated by the national government,[137] which did not immediately pay Francia. In the meantime, he failed to pay the real property tax due on his remaining property to the local government of Pasay, which later on would auction the property on account of such delinquency.[138] He then moved to set aside the auction sale and argued, among others, that his real property tax delinquency was extinguished by legal compensation on account of his unpaid claim against the national government.[139] This court ruled against Francia:

> There is no legal basis for the contention. By legal compensation, obligations of persons, who in their own right are reciprocally debtors and creditors of each other, are extinguished (Art. 1278, Civil Code). The circumstances of the case do not satisfy the requirements provided by Article 1279, to wit:
>
> > (1) that each one of the obligors be bound principally and that he be at the same time a principal creditor of the other;
> >
> > x x x x x x x x x
> >
> > (3) that the two debts be due.
> >
> > x x x x x x x x x
>
> This principal contention of the petitioner has no merit. We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

---

[136] *Francia v. Intermediate Appellate Court*, 245 Phil. 717, 722 (1988) [Per *J.* Gutierrez, Jr., Third Division].

[137] *Id.* at 719.

[138] *Id.* at 720.

[139] *Id.* at 722.

. . . .

There are other factors which compel us to rule against the petitioner. *The tax was due to the city government while the expropriation was effected by the national government.* Moreover, the amount of ₱4,116.00 paid by the national government for the 125 square meter portion of his lot was deposited with the Philippine National Bank long before the sale at public auction of his remaining property. Notice of the deposit dated September 28, 1977 was received by the petitioner on September 30, 1977. The petitioner admitted in his testimony that he knew about the ₱4,116.00 deposited with the bank but he did not withdraw it. It would have been an easy matter to withdraw ₱2,400.00 from the deposit so that he could pay the tax obligation thus aborting the sale at public auction.[140]

The ruling in *Francia* was applied to the subsequent cases of *Caltex Philippines, Inc. v. Commission on Audit*[141] and *Philex Mining Corporation v. Commissioner of Internal Revenue*.[142] In *Caltex*, this court reiterated:

[A] taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.[143] (Citations omitted)

*Philex Mining* ruled that "[t]here is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity."[144] Rejecting Philex Mining's assertion

---

[140] *Id.* at 722-723.

[141] G.R. No. 92585, May 8, 1992, 208 SCRA 726 [Per *J.* Davide, Jr., *En Banc*].

[142] 356 Phil. 189 (1998) [Per *J.* Romero, Third Division].

[143] *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 8, 1992, 208 SCRA 726, 756 [Per *J.* Davide, Jr., *En Banc*].

[144] *Philex Mining Corporation v. Commissioner of Internal Revenue*, 356 Phil. 189, 198 (1998) [Per *J.* Romero, Third Division], *citing Commissioner*

that the imposition of surcharge and interest was unjustified because it had no obligation to pay the excise tax liabilities within the prescribed period since, after all, it still had pending claims for VAT input credit/refund with the Bureau of Internal Revenue, this court explained:

> To be sure, we cannot allow Philex to refuse the payment of its tax liabilities on the ground that it has a pending tax claim for refund or credit against the government which has not yet been granted. It must be noted that a distinguishing feature of a tax is that it is compulsory rather than a matter of bargain. Hence, a tax does not depend upon the consent of the taxpayer. If any tax payer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of the tax is contingent on the result of the lawsuit it filed against the government. Moreover, Philex's theory that would automatically apply its VAT input credit/refund against its tax liabilities can easily give rise to confusion and abuse, depriving the government of authority over the manner by which taxpayers credit and offset their tax liabilities.[145] (Citations omitted)

In sum, the rulings in those cases were to the effect that the taxpayer cannot simply refuse to pay tax on the ground that the tax liabilities were off-set against any alleged claim the taxpayer may have against the government. Such would merely be in keeping with the basic policy on prompt collection of taxes as the lifeblood of the government.

Here, what is involved is a denial of a taxpayer's refund claim on account of the Court of Tax Appeals' finding of its liability for another tax in lieu of the Gross Philippine Billings tax that was allegedly erroneously paid.

Squarely applicable is *South African Airways* where this court rejected similar arguments on the denial of claim for tax refund:

---

*of Internal Revenue v. Palanca, Jr.*,124 Phil. 1102, 1107 (1966) [Per *J.* Regala, *En Banc*].

[145] *Id*. at 200.

*Commissioner of Internal Revenue v. Court of Tax Appeals*, however, granted the offsetting of a tax refund with a tax deficiency in this wise:

> Further, it is also worth noting that the Court of Tax Appeals erred in denying petitioner's supplemental motion for reconsideration alleging bringing to said court's attention the existence of the deficiency income and business tax assessment against Citytrust. The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.
>
> *The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.*
>
> Section 82, Chapter IX of the National Internal Revenue Code of 1977, which was the applicable law when the claim of Citytrust was filed, provides that "(w)hen an assessment is made in case of any list, statement, or return, which in the opinion of the Commissioner of Internal Revenue was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suits unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines."
>
> Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the

> prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.
>
> In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would [be] necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein.

Sec. 82, Chapter IX of the 1977 Tax Code is now Sec. 72, Chapter XI of the 1997 NIRC. The above pronouncements are, therefore, still applicable today.

Here, petitioner's similar tax refund claim assumes that the tax return that it filed was correct. Given, however, the finding of the CTA that petitioner, although not liable under Sec. 28(A)(3)(a) of the 1997 NIRC, is liable under Sec. 28(A)(1), the correctness of the return filed by petitioner is now put in doubt. As such, we cannot grant the prayer for a refund.[146] (Emphasis supplied, citation omitted)

---

[146] *South African Airways v. Commissioner of Internal Revenue*, 626 Phil. 566, 577 (2010) [Per *J.* Velasco, Jr., Third Division].

In the subsequent case of *United Airlines, Inc. v. Commissioner of Internal Revenue*,[147] this court upheld the denial of the claim for refund based on the Court of Tax Appeals' finding that the taxpayer had, through erroneous deductions on its gross income, underpaid its Gross Philippine Billing tax on cargo revenues for 1999, and the amount of underpayment was even greater than the refund sought for erroneously paid Gross Philippine Billings tax on passenger revenues for the same taxable period.[148]

In this case, the ₱5,185,676.77 Gross Philippine Billings tax paid by petitioner was computed at the rate of 1½% of its gross revenues amounting to ₱345,711,806.08[149] from the third quarter of 2000 to the second quarter of 2002. It is quite apparent that the tax imposable under Section 28(A)(1) of the 1997 National Internal Revenue Code [32% of taxable income, that is, gross income less deductions] will exceed the maximum ceiling of 1½% of gross revenues as decreed in Article VIII of the Republic of the Philippines-Canada Tax Treaty. Hence, no refund is forthcoming.

**WHEREFORE**, the Petition is **DENIED.** The Decision dated August 26, 2005 and Resolution dated April 8, 2005 of the Court of Tax Appeals En Banc are **AFFIRMED.**

**SO ORDERED.**

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

---

[147] 646 Phil. 184 (2010) [Per *J.* Villarama, Jr., Third Division].

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

[149] *Rollo*, pp. 79-105, Air Canada's Quarterly and Annual Income Tax Returns.

**SECOND DIVISION**

[G.R. No. 171722. January 11, 2016]

**REMEDIOS PASCUAL**, *petitioner, vs.* **BENITO BURGOS, ET AL.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE APPELLATE COURT WILL NOT BE REVIEWED NOR DISTURBED BY THE SUPREME COURT; EXCEPTIONS, EXPLAINED.—** The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.:* (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases. A question of fact requires this court to review the truthfulness or falsity

of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.

**2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; NOT ESTABLISHED IN CASE AT BAR.—** The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. Grave abuse of discretion is defined, thus: By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts. x x x Petitioner fails to convince this court that the Court of Appeals committed grave abuse of discretion in reversing the trial court's factual findings and appreciation of the evidence presented by the parties. Petitioner claims that: x x x Other than saying that the Court of Appeals allegedly failed to apply doctrines laid down by this court, petitioner has not presented this court with cogent reasons why the Court of Appeals gravely abused its discretion when it re-evaluated the evidence presented by the parties and reached different factual findings. Grave abuse of discretion, to be an exception to the rule, must have attended the evaluation of the facts and evidence presented by the parties. x x x In any case, the Court of Appeals' reversal or modification of the factual findings of the trial court does not automatically mean that it gravely abused its discretion. The Court of Appeals, acting as an appellate court, is still a trier of facts. Parties can raise questions of fact before the Court of Appeals and it will have jurisdiction to rule on these matters. Otherwise, if only questions of law are raised, the appeal should be filed directly before this court.

**APPEARANCES OF COUNSEL**

*Wilfredo O. Arceo* for petitioner.
*Oliviano R. Regalado* for respondents.

**D E C I S I O N**

**LEONEN, *J.*:**

Only questions of law may be raised in a petition for review on *certiorari*.[1] The factual findings of the Court of Appeals bind this court.[2] Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this court may evaluate and review the facts of the case. In any event, even in such cases, this court retains full discretion on whether to review the factual findings of the Court of Appeals.

This Petition for Review on *Certiorari*[3] assails the Court of Appeals Decision[4] that reversed the trial court Decision, and ordered the trial court to disallow redemption of the property and to consolidate ownership upon respondents, and Resolution that denied reconsideration.[5] The Court of Appeals reversed the factual findings of the trial court.[6]

---

[1] Rules of Court, Rule 45, Sec. 1.

[2] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

[3] *Rollo*, pp. 10-25.

[4] *Id*. at 26-40. The case was docketed as CA-G.R. CV No. 73060. The Decision was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Salvador J. Valdez, Jr. (Chair) and Mariano C. Del Castillo (now an Associate Justice of this court) of the Eighth Division.

[5] *Id*. at 41-42. The Resolution was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mariano C. Del Castillo (Chair) and Arturo D. Brion (now an Associate Justice of this court) of the Special Former Eighth Division.

[6] *Id*. at 39, Court of Appeals Decision.

Ernesto and Remedios Pascual (Pascual Spouses) and Benito Burgos, et al. (Burgos, et al.)[7] co-own a fishpond situated in Bulacan covered by Original Certificate of Title No. 21.[8]

On September 8, 1965, Burgos, et al. filed an action for partition of the fishpond and prayed for an "accounting of the income of the . . . fishpond from 1945[.]"[9]

On August 31, 1976, the trial court rendered the Decision apportioning to Burgos, et al. 17% and to the Pascual Spouses 83% of the fishpond.[10] The Pascual Spouses were also ordered to pay Burgos, et al. their unpaid shares in the income of the property since 1945, until the actual partition and delivery of shares.[11]

The Pascual Spouses appealed the trial court Decision before the Court of Appeals,[12] which was denied on June 30, 1983.[13] The Petition for Review on Certiorari filed before this court was also denied on January 11, 1984, and the Motion for Reconsideration denied on March 22, 1984.[14]

While the appeal of the trial court Decision on the partition case was pending, several incidents happened. On November 25, 1976, Burgos, et al. filed a Motion for Execution Pending Appeal of the money portion of the trial court Decision.[15] The

---

[7] The names of the other respondents are not indicated in the *rollo* or in the lower courts' records.

[8] RTC records, p. 18, Court of Appeals Decision in CA-G.R. CV No. 15902.

[9] *Id*.

[10] *Id*. at 18-19.

[11] *Id*.

[12] *Rollo*, p. 29, Court of Appeals Decision. The case was docketed as CA-G.R. No. 62252-R.

[13] *Id*.

[14] *Id*. at 30.

[15] *Id*. at 27.

Motion was granted by the trial court.[16] The Pascual Spouses then filed a Petition for Certiorari before the Court of Appeals.[17]

On July 5, 1978, the Court of Appeals dismissed the Pascual Spouses' Petition for Certiorari assailing the grant of the Motion for Execution Pending Appeal.[18] The Pascual Spouses then filed a Petition for Review before this court, which was denied on May 16, 1979.[19]

On December 28, 1981, the trial court issued another order granting execution pending appeal.[20] Thus, on February 9, 1982, the Deputy Sheriff of Bulacan addressed a Notice of Levy to the Register of Deeds of Bulacan, notifying that the fishpond and all its improvements were being levied.[21]

The Deputy Sheriff then issued a Notice of Auction Sale of Real Property setting the public auction on March 23, 1982.[22] The auction sale was on the Pascual Spouses' share of the fishpond.[23]

On March 23, 1982, the auction sale was conducted and the Pascual Spouses' share of the fishpond was sold for ₱95,000.00 to Burgos, et al., through a certain Marcial Meneses, the highest bidder.[24] A Certificate of Sale was then issued.[25]

On February 23, 1983, after almost a year since the conduct of the auction sale, the Pascual Spouses filed an Omnibus Motion before the trial court assailing the Writ of Execution issued on

---

[16] *Id*.

[17] *Id*. The case was docketed as CA-G.R. No. 07052-R.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 28.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

December 28, 1981 and the ensuing levy and sale of their share in the fishpond.[26] The Pascual Spouses also "offer[ed] to post a bond to stay execution[.]"[27] On April 21, 1983, the trial court denied the Pascual Spouses' Omnibus Motion since the assailed orders had already become final and executory.[28]

On April 25, 1983, the Pascual Spouses filed an Urgent Motion for Reconsideration and/or Extension of Time to Redeem before the trial court.[29] They argued that the sale was void since the trial court Decision[30] on the partition case, which was the basis for the Motion for Execution, was still pending appeal.[31] They also argued that the Decision ordered that "the disputed property should not be touched pending appeal[.]"[32] The Pascual Spouses also prayed that they be given until May 16, 1983 to redeem the property considering that the period of redemption already expired on April 15, 1983.[33]

Burgos, et al. filed a Motion for Confirmation of Sale on July 8, 1983, and then a Motion for Issuance of Writ of Possession on August 30, 1983.[34]

In the Order dated September 16, 1983, the trial court denied the Pascual Spouses' Urgent Motion for Reconsideration and/or Extension of Time to Redeem and granted Burgos, et al.'s Motions for Confirmation of Sale and Issuance of Writ of Possession.[35]

---

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] RTC records, pp. 18-30. The case was docketed as CA-G.R. CV No. 15902. The Decision was penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Pedro A. Ramirez and Cancio C. Garcia of the Eighth Division.

[31] *Rollo*, pp. 28-29, Court of Appeals Decision.

[32] RTC records, p. 20.

[33] *Rollo*, pp. 28-29, Court of Appeals Decision.

[34] *Id*. at 29.

[35] *Id*.

Undeterred, the Pascual Spouses filed on September 26, 1983 an Urgent Motion to Quash and/or Recall Writ of Possession also before the trial court.[36] They argued for the first time that irregularities attended the auction sale, alleging anomalies in the number of times the notice of sale was published, the unconscionably low price the fishpond was sold at the auction sale, the lack of authority of Marcial Meneses to buy the fishpond on behalf of Burgos, et al., and the insufficiency in the description of rights and interests to be sold in the notice of sale.[37]

Without waiting for the resolution of the Urgent Motion to Quash and/or Recall Writ of Possession, the Pascual Spouses initiated on April 24, 1984 a separate case for annulment of execution of sale against Burgos, et al.[38] This was raffled to Branch 6 of the Regional Trial Court, Malolos, Bulacan.[39] Burgos, et al. then filed a Motion for Preliminary Hearing of their defense of lack of jurisdiction.[40] The trial court denied the Motion, which prompted Burgos, et al. to file a Petition for Certiorari before the Court of Appeals.[41] The Court of Appeals granted the Petition and ordered the dismissal of the Pascual Spouses' annulment of execution sale case.[42] The Pascual Spouses filed a Petition for Review before this court, which was denied on March 10, 1989.[43]

As to the Pascual Spouses' Urgent Motion to Quash and/or Recall Writ of Possession, the trial court denied the Motion in the Decision dated October 10, 1984.[44] The Pascual Spouses

---

[36] *Id*. at 30.

[37] *Id*.

[38] *Id*. The case was docketed as Civil Case No. 7442-M.

[39] *Id*.

[40] *Id*. at 31.

[41] *Id*.; RTC records, p. 22, Court of Appeals Decision in CA-G.R. CV No. 15902. The case was docketed as CA-G.R. No. 19179.

[42] RTC records, pp. 22-23, Court of Appeals Decision in CA-G.R. CV No. 15902.

[43] *Id*. at 23.

[44] *Id*. at 21-22.

filed a Motion for Partial Reconsideration that was denied by the trial court in the Order dated December 18, 1986.[45] The trial court also rejected the Pascual Spouses' argument on the irregularities of the auction sale and, instead, upheld its validity.[46] Thus, the Pascual Spouses filed a Petition for Review before the Court of Appeals assailing the trial court's October 10, 1984 Decision and its December 18, 1986 Order.[47]

On May 6, 1994, the Court of Appeals[48] affirmed the trial court's Decision upholding the validity of the auction sale.[49] However, it considered the Pascual Spouses' allegation that the price at which the fishpond was sold was unconscionably low.[50] The Court of Appeals ordered the remand of the case to the trial court for reception of evidence in order to determine the fair market value of the fishpond at the time of the auction sale and whether equity demands that the Pascual Spouses still be allowed to redeem the property.[51] The dispositive portion of the Decision states:

> WHEREFORE, this case is hereby remanded to the lower court, which is hereby directed to receive evidence solely for the purpose of determining the fair market value of the property in question on March 23, 1982, when the rights and interests of defendants-appellants therein were sold at public action, and to decide on the basis thereof, whether or not it is equitable to allow the defendants-appellants to redeem the said rights and interests. In all other aspects not inconsistent with this, the orders herein appealed from are hereby AFFIRMED, with costs against the defendants-appellants.[52]

---

[45] *Id*. at 22.

[46] *Id*.

[47] *Id*. at 18.

[48] *Id*. at 18-30. The case was docketed as CA-G.R. CV No. 15902. The Decision was penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Pedro A. Ramirez and Cancio C. Garcia of the Eighth Division.

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

[50] *Id*. at 29.

[51] *Id*.

[52] *Id*.

Burgos, et al. filed before this court a Petition for Review on Certiorari assailing the Court of Appeals Decision remanding the case to the trial court.[53] This court denied the Petition on July 12, 1995, and the Resolution became final and executory on October 9, 1995.[54] The case was then remanded to the Regional Trial Court.[55]

On April 23, 1999, the trial court set the case for hearing pursuant to the Court of Appeals Decision dated May 6, 1994.[56]

The Pascual Spouses presented three (3) witnesses[57] to prove that the fair market value of the fishpond sold at public auction in 1982 was ₱200,000.00 per hectare. On the other hand, Burgos, et al. presented three (3) witnesses[58] to prove that the fishpond's fair market value was only ₱10,000.00 to ₱20,000.00 per hectare.

The Pascual Spouses' first witness, Silvestre Pascual, is the brother of Ernesto Pascual.[59] He testified that, as the son of the fishpond's owner and as a fishpond operator himself, he knew the value of the fishpond.[60] Silvestre Pascual testified that in 1963 or 1964, the fishpond previously owned by his mother was sold to Ernesto Pascual for ₱100,000.00.[61] In 1982, he learned

---

[53] *Id*. at 34.

[54] *Id*.

[55] *Id*. at 35.

[56] *Id*. at 36.

[57] *Rollo*, p. 43, Regional Trial Court Decision. The witnesses were "Silvestre Pascual, the son of the former owner of the property and a fishpond operator himself, Guillermo Samonte, a fishpond caretaker of Lito Samonte and a former fishpond caretaker of Antonio Gonzales at Taliptip, Bulacan, Bulacan, and Atty. Antonio Gonzales, the former President of Prescillano Gonzales Development Corporation."

[58] *Id*. at 44. The witnesses were "Policarpio A. [d]ela Cruz, the son of one of the heirs, Patricia de los [sic] Reyes, the great grandniece of plaintiff Benito Burgos and Antonio Magpayo[,] Jr., the Municipal Assesor [sic] of Bulacan, Bulacan."

[59] *Id*.

[60] *Id*. at 43.

[61] *Id*. at 44.

from his friends and neighbors who were also fishpond operators that the value of the fishpond was already ₱200,000.00 per hectare.[62]

The Pascual Spouses' second witness was Guillermo Samonte, a fishpond caretaker.[63] He testified that the market value of the fishpond was ₱200,000.00 per hectare in 1982.[64] He knew this amount as he witnessed the sale transaction between the Fishermen Corporation and Precillano[65] Gonzales Development Corporation.[66] To prove the transaction, Guillermo Samonte presented a Deed of Absolute Sale[67] dated November 19, 1981 and testified that the total consideration was ₱10,000,000.00.[68] The Deed documented a sale of a 481,461-square meter parcel of land in Bulacan for ₱4,000,000.00.[69]

Antonio Gonzales was the Pascual Spouses' third witness. He was the former President of Precillano Gonzales Development Corporation and he purchased the property testified to by Guillermo Samonte for the Corporation.[70] He corroborated the testimony of Guillermo Samonte and clarified that ₱4,000,000.00 was paid in cash to the seller and the seller's loan of ₱6,000,000.00 to Philippine National Bank was assumed by the buyer, totaling ₱10,000,000.00.[71]

Burgos, et al.'s first witness, Policarpio dela Cruz, was the son of Catalina Antonio, one of the former owners of the fishpond

---

[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] Prescillano (*Id*. at 43) and Precillano (*Id*. at 45) are used interchangeably in the records.

[66] *Id*. at 45.

[67] RTC records, pp. 94-97.

[68] *Rollo*, pp. 44-45, Regional Trial Court Decision.

[69] RTC records, p. 96, Deed of Absolute Sale.

[70] *Rollo*, p. 45, Regional Trial Court Decision.

[71] *Id*.

who sold her share to the Pascual Spouses.[72] He claimed knowledge of the prices of fishponds as he grew up in and continued visiting Bulacan.[73] He testified that in 1982, first-class fishponds were sold at ₱20,000.00 to ₱30,000.00 per hectare "while second [-] class fishponds were sold at a lower price."[74] The fishpond in this case is considered second-class so it was priced at ₱10,000.00 to ₱20,000.00 per hectare.[75]

Policarpio dela Cruz presented two (2) tax declarations.[76] The first tax declaration with number 223[77] series of 1974 covered the fishpond. The tax declaration states that the market value of the fishpond was ₱202,694.00.[78] The second tax declaration with number 10468[79] series of 1980 covered a parcel of land in Bulacan used as a fishpond with an area of 12.9493 hectares.[80] The market value of the property was ₱388,479.00.[81]

Patricia delos Reyes was Burgos, et al.'s second witness. She testified that she is the great grandniece of Benito Burgos and was in possession of the property pursuant to this court's Decision.[82] She presented two (2) tax declarations covering the property to prove its market value.[83] The first was the same tax declaration presented by Policarpio dela Cruz with number 223,[84] series of 1974. It showed that the property had an area of 10.1347

---

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

[73] *Id*. at 46.

[74] *Id*. at 45.

[75] *Id*.

[76] *Id*. at 46.

[77] RTC records, p. 107.

[78] *Id*.

[79] *Id*. at 109.

[80] *Id*.

[81] *Id*.

[82] *Rollo*, p. 46, Regional Trial Court Decision.

[83] *Id*.

[84] RTC records, p. 129.

hectares and market value of ₱202,694.00.[85] Tax declaration number 223 series of 1974 was cancelled by tax declaration number 12807[86] dated April 9, 1985,[87] the second tax declaration presented by Patricia delos Reyes. Tax declaration number 12807 states that the market value of the property is ₱304,041.00.[88]

Burgos, et al.'s last witness was Antonio Magpayo, the Municipal Assessor in Bulacan in 1975 and re-appointed in 1995.[89] Antonio Magpayo identified and showed in his Book of Tax Declarations the tax declaration presented by Patricia delos Reyes.[90] He also testified that no tax declaration was issued in 1982.[91]

On September 24, 2001, the trial court[92] gave credence to the evidence presented by the Pascual Spouses.[93] The trial court considered the testimony of Antonio Gonzales authoritative, having come from a disinterested witness who was a fishpond operator himself and who negotiated the sale of a 48-hectare fishpond also in Bulacan.[94] The trial court did not give any weight to the tax declarations presented by Burgos, et al.'s witnesses as these did not reflect the actual fair market value of the properties covered by these tax declarations.[95] The trial court held:

---

[85] *Id*.

[86] *Id*. at 128.

[87] *Id*.

[88] *Id*. at 128.

[89] *Rollo*, p. 47, Regional Trial Court Decision.

[90] *Id*.

[91] *Id*.

[92] The Decision was penned by Judge Manuel R. Ortiguerra of Branch 8 of the Regional Trial Court of Malolos, Bulacan.

[93] *Rollo*, p. 48, Regional Trial Court Decision.

[94] *Id*.

[95] *Id*.

WHEREFORE, this Court finds the fair market value of the fishpond in question to be ₱200,000.00 per hectare or ₱2,000,000.00 in 1982. Considering that it was only sold at an unusually lower price of ₱95,000.00 than its true value, the Court consequently finds it equitable to allow the defendants to redeem the rights and interests thereto within a period of ninety (90) days after the finality of this decision.

SO ORDERED.[96]

Burgos, et al. appealed the trial court Decision.[97]

On June 30, 2005, the Court of Appeals rendered the Decision granting the appeal.[98] It emphasized that the Decision, which remanded the case to the trial court, still affirmed the validity of the auction sale and the issuance of a Writ of Possession in favor of Burgos.[99] The case was remanded solely to determine the fair market value of the property to decide on whether the Pascual Spouses can still redeem the property as a matter of equity.[100]

Upon review of the evidence presented by the parties, the Court of Appeals found that there was a discrepancy between the testimony of Antonio Gonzales and the provisions in the Deed of Sale presented.[101] Antonio Gonzales testified that the purchase price of the fishpond in the sale between The Fishermen Corporation and Precillano Gonzales Development Corporation was ₱10,000,000.00.[102] ₱4,000,000.00 was paid in cash, while the buyer had to assume the ₱6,000,000.00 loan of the seller.[103] However, the Deed of Sale provides otherwise:

---

96 *Id*.

97 *Id*. at 26, Court of Appeals Decision.

98 *Id*. at 39.

99 *Id*. at 33.

100 *Id*. at 33 and 39.

101 *Id*. at 35.

102 *Id*.

103 *Id*.

From the purchase price of ₱4,000,000.00, the BUYER shall undertake to pay the existing indebtedness of SELLER to the National Investment and Development Corporation and the Philippine National Bank in order to secure the release of the mortgaged property. The amount paid to the National Investment and Development Corporation shall be considered as part of the purchase price.[104] (Underscoring in the original)

The Pascual Spouses offered no proof to clarify this inconsistency.[105] Moreover, the sale testified to by the witnesses of the Pascual Spouses was an isolated transaction.[106] No evidence was presented to show that the fishpond subject of the sale was the same type, quality, and quantity of the disputed fishpond.[107] The Court of Appeals held that this sale cannot be deemed to reflect the fair market value of the disputed fishpond.[108]

On the other hand, the tax declarations presented by Burgos, et al., being public documents, are prima facie evidence of the statements written there, including the market value of the property.[109] Thus, the Pascual Spouses must present ample proof to substantiate a contrary allegation,[110] which they failed to do. Thus:

**WHEREFORE**, this appeal is **GRANTED**. The *Decision* dated September 24, 2001 of the Regional Trial Court, Branch 8, Malolos, Bulacan is hereby **REVERSED** and **SET ASIDE**. The trial court is ordered not to allow appellees to redeem their former rights, interests and participation in the property covered by Original Certificate of Title No. 21, and to consolidate ownership of the same upon appellants.[111]

---

[104] *Id*.

[105] *Id*. at 37.

[106] *Id*. at 38.

[107] *Id*.

[108] *Id*.

[109] *Id*. at 36.

[110] *Id*.

[111] *Id*. at 39.

The Pascual Spouses filed a Motion for Reconsideration, which was denied by the Court of Appeals in the Resolution dated February 13, 2006.[112]

Remedios Pascual filed this Petition for Review on Certiorari assailing the Court of Appeals Decision and Resolution, which reversed and set aside the trial court Decision.

Upon order[113] of this court, Burgos, et al. filed a Comment[114] on September 21, 2006. This court then required Remedios Pascual to file a Reply.[115] Remedios Pascual filed a Manifestation[116] stating that she was not filing a Reply.

The issues raised by petitioner Remedios Pascual and respondents Benito Burgos, et al. are:

First, whether a petition for review before this court allows a review of the factual findings of the lower courts; and

Second, whether this case presents an exception to the rule on this court's power to review decisions of the Court of Appeals via a petition for review. If in the affirmative, whether the price at which the fishpond was sold is unconsionably low.

We find that the case does not fall under any of the exceptions. Thus, we do not delve into the factual issues of the case and affirm the Decision of the Court of Appeals.

I

Review of appeals filed before this court is "not a matter of right, but of sound judicial discretion[.]"[117] This court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]"[118] This is especially

---

[112] *Id*. at 41-42, Court of Appeals Resolution.

[113] *Id*. at 63, Supreme Court Resolution dated June 26, 2006.

[114] *Id*. at 76-82.

[115] *Id*. at 87, Supreme Court Resolution dated November 29, 2006.

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

[117] RULES OF COURT, Rule 45, Sec. 6.

[118] RULES OF COURT, Rule 45, Sec. 6.

applicable in this case, where the issues have been fully ventilated before the lower courts in a number of related cases.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[119] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[120] when supported by substantial evidence.[121] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[122]

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[123]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is

---

[119] RULES OF COURT, Rule 45, Sec. 1.

[120] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per *J.* Pardo, First Division].

[121] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J.* Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J.* Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[122] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[123] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

premised on the supposed absence of evidence and is contradicted by the evidence on record.[124] (Citations omitted)

These exceptions similarly apply in petitions for review filed before this court involving civil,[125] labor,[126] tax,[127] or criminal cases.[128]

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[129] This review includes assessment of the "probative value of the evidence presented."[130] There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.

Petitioner asks this court to review the facts of the case:

This Honorable Court is now, from the foregoing, confronted with a controversy as to which will prevail – the findings of facts of the

---

[124] *Id*. at 232.

[125] *Dichoso, Jr. v. Marcos*, G.R. No. 180282, April 11, 2011, 647 SCRA 495, 501-502 [Per *J*. Nachura, Second Division] and *Spouses Caoili v. Court of Appeals*, 373 Phil. 122, 132 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

[126] *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per *J*. Ynares-Santiago, First Division] and *Arriola v. Pilipino Star Ngayon, Inc.*, G.R. No. 175689, August 13, 2014, 732 SCRA 656, 673 [Per *J*. Leonen, Third Division].

[127] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per *J*. Pardo, First Division].

[128] *Macayan, Jr. v. People*, G.R. No. 175842, March 18, 2015 <http://sc.judiciary.gov.ph/jurisprudence/2015/march2015/175842.pdf> 9 [Per *J*. Leonen, Second Division]; *Benito v. People*, G.R. No. 204644, February 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/204644.pdf> 7 [Per *J*. Leonen, Second Division].

[129] *Republic v. Ortigas and Company Limited Partnership*, G.R. No. 171496, March 3, 2014, 717 SCRA 601, 613 [Per *J*. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011) [Per *J*. Carpio Morales, Third Division].

[130] *Republic v. Ortigas and Company Limited Partnership*, G.R. No. 171496, March 3, 2014, 717 SCRA 601, 612 [Per *J*. Leonen, Third Division].

trial court which is based on preponderance of evidence or the findings of facts of the court *a quo* which is based on the alleged misapprehension of facts allegedly committed by the former court.[131]

Petitioner admits that she is raising factual issues that this court cannot entertain.[132] However, she argues that this case falls under the exceptions to this rule.[133]

II

Parties praying that this court review the factual findings of the Court of Appeals must demonstrate and prove that the case clearly falls under the exceptions to the rule. They have the burden of proving to this court that a review of the factual findings is necessary.[134] Mere assertion and claim that the case falls under the exceptions do not suffice.

Petitioner claims that this case presents two (2) exceptions to the rule against a review of factual findings by this court.[135] Petitioner alleges that the Court of Appeals committed grave abuse of discretion.[136] Further, she states that the findings of fact of the Court of Appeals and of the Regional Trial Court are contrary to each other.[137]

Respondents counter that the Court of Appeals Decision is "more consistent with the testimony of the witnesses and the evidence presented by the parties during the trial[.]"[138]

---

[131] *Rollo*, p. 23, Petition.

[132] *Id*. at 20.

[133] *Id*. at 21.

[134] *Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000) [Per J. De Leon, Jr., Second Division]: "In civil cases the burden of proof to be established by preponderance of evidence is on the plaintiff who is the party asserting the affirmative of an issue. He has the burden of presenting evidence required to obtain a favorable judgment, and he, having the burden of proof, will be defeated if no evidence were given on either side."

[135] *Rollo*, p. 21, Petition.

[136] *Id*. at 22.

[137] *Id*.

[138] *Id*. at 77, Comment.

III

The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. Grave abuse of discretion is defined, thus:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.
>
> Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[139] (Citations omitted)

This exception was first laid down in *Buyco v. People, et al.*:[140]

> In the case at bar, the Tenth Amnesty Commission, the court of first instance and the Court of Appeals found, in effect, that the evidence did not suffice to show that appellant had acted in the manner contemplated in the amnesty proclamation. Moreover, unlike the Barrioquinto cases, which were appealed *directly* to this Court, which, accordingly, had authority to pass upon the validity of the findings of fact of the court of first instance and of its conclusions on the veracity of the witnesses, the case at bar is before us on appeal *by certiorari* from a decision of the Court of Appeals, *the findings and conclusions of which, on the aforementioned subjects, are not subject to our review, except in cases of grave abuse of discretion*, which has not been shown to exist.[141] (Emphasis supplied)

---

[139] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591-592 (2007) [Per *J.* Austria-Martinez, Third Division].

[140] 95 Phil. 453 (1954) [Per *J.* Concepcion, *En Banc*].

[141] *Id.* at 461.

Petitioner fails to convince this court that the Court of Appeals committed grave abuse of discretion in reversing the trial court's factual findings and appreciation of the evidence presented by the parties. Petitioner claims that:

> [T]he court *a quo* gravely abused its discretion when it rendered its assailed decision and resolution since it contravened the principle that "findings of fact of trial courts are entitled to great respect and are bindings [sic] on the Supreme Court in the absence of showing bias, partiality, or grave abuse of discretion on the part of the presiding judge" – (People *vs.* Vitancur, 345 SCRA 414) and the principle that "in the absence of a palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal" – (People *vs*. Mendez, 335 SCRA 147).[142]

Other than saying that the Court of Appeals allegedly failed to apply doctrines laid down by this court, petitioner has not presented this court with cogent reasons why the Court of Appeals gravely abused its discretion when it re-evaluated the evidence presented by the parties and reached different factual findings.

Grave abuse of discretion, to be an exception to the rule, must have attended the evaluation of the facts and evidence presented by the parties. In *Cariño v. Court of Appeals*,[143] the issue presented before this court was "whether the respondent Court of Appeals committed grave abuse of discretion in concluding that the Deed of Sale of House and Transfer of Rights (Exhibit 'D-1'), on which the petitioners have based their application over the questioned lot, is simulated and, therefore, an inexistent deed of sale."[144] To resolve the issue, this court examined whether there was substantial and convincing evidence to support the factual findings of the Court of Appeals.[145]

---

[142] *Rollo*, p. 22, Petition.

[143] 236 Phil. 566 (1987) [Per *J*. Padilla, Second Division].

[144] *Id*. at 573.

[145] *Id*.

In any case, the Court of Appeals' reversal or modification of the factual findings of the trial court does not automatically mean that it gravely abused its discretion. The Court of Appeals, acting as an appellate court, is still a trier of facts. Parties can raise questions of fact before the Court of Appeals and it will have jurisdiction to rule on these matters. Otherwise, if only questions of law are raised, the appeal should be filed directly before this court.

This is not to say that the trial court's findings of fact, especially with regard to the credibility of witnesses, are of little weight. The doctrine in the cases cited by petitioner, *People v. Vitancur*[146] and *People v. Mendez*,[147] is a time-honored rule. The trial court's findings of fact are given much weight because of the trial court judges' first-hand knowledge and familiarity with the disposition of the witnesses who testified before them, and this is important in certain cases. However, this doctrine does not diminish the Court of Appeals' jurisdiction in reviewing the factual findings of the trial court. Further, in the cited cases, the Court of Appeals did not even have the opportunity to review the factual findings of the trial court as the case was directly elevated to this court on automatic appeal.[148]

IV

The Court of Appeals' appreciation of the weight of the evidence presented by the parties is opposed to that of the trial court. Unlike the trial court, the Court of Appeals did not give any weight to Antonio Gonzales' testimony.[149] Instead, it relied on the tax declarations presented by the parties to find the market value of the fishpond in 1982.[150]

---

[146] 399 Phil. 131 (2000) [Per *J*. Mendoza, Second Division].

[147] 390 Phil. 449 (2000) [Per *J*. Gonzaga-Reyes, *En Banc*].

[148] *People v. Vitancur*, 399 Phil. 131, 133 (2000) [Per *J*. Mendoza, Second Division] and *People v. Mendez*, 390 Phil. 449, 454 (2000) [Per *J*. Gonzaga-Reyes, *En Banc*].

[149] *Rollo*, pp. 37-38, Court of Appeals Decision.

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

While the factual findings of the Court of Appeals are contrary to those of the trial court, this alone does not automatically warrant a review of factual findings by this court. In *Uniland Resources v. Development Bank of the Philippines*:[151]

> It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions.[152] (Citations omitted)

The lower courts' disagreement as to their factual findings, at most, presents only prima facie basis for recourse to this court:

> One such exception, of course, is where — as here — the factual findings of the Court of Appeals conflict with those of the Trial Court, but it is one that must be invoked and applied only with great circumspection and upon a clear showing that manifestly correct findings have been unwarrantedly rejected or reversed. On the one hand, the trial court is the beneficiary of the rule that its findings of fact are entitled to great weight and respect; on the other, the Court of Appeals is, as a general proposition, the ultimate judge of the facts in a case appealed to it — a prerogative which is at the same time a duty conferred upon it by law. Thus, while a conflict in their findings may *prima facie* provide basis for a recourse to this Court, only a showing, on the face of the record, of gross or extraordinary misperception or manifest bias in the Appellate Court's reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province. There is

---

[151] G.R. No. 95909, August 16, 1991, 200 SCRA 751 [Per *J*. Gancayco, First Division].

[152] *Id*. at 755.

no showing here of such exceptional circumstances, petitioners advertence to certain findings of the Court of Appeals in her view contrary to the weight or import of the evidence notwithstanding. In short, nothing in the record warrants this Court's substituting its own assessment of the evidence for that of the Court of Appeals in contravention of the general rule that restricts to questions of law the scope of its review of the latter's decisions.[153] (Citation omitted)

*Garcia, et al. v. Court of Appeals, et al.*,[154] the case cited by *Medina*[155] as basis for this exception, supports this pronouncement. In *Garcia*, this court considered the contrary findings of the Court of Appeals and the trial court as one of the circumstances compelling this court to find out whether the case falls under the exceptions allowing it to review factual findings of the Court of Appeals.[156] Thus:

The preliminary question which poses itself in connection with this first assignment of error is whether this Court may make its own findings of fact independently of those made by the Court of Appeals. The general rule is that the appellate court's findings are conclusive, but this rule is not without some recognized exceptions, such as:

> (1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.

---

[153] *Fernan v. Court of Appeals*, 260 Phil. 594, 598-599 (1990) [Per *J*. Narvasa, First Division].

[154] 144 Phil. 615 (1970) [Per *J*. Makalintal, *En Banc*].

[155] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J*. Bidin, Third Division].

[156] *Garcia, et al. v. Court of Appeals, et al.*, 144 Phil. 615, 619 (1970) [Per *J*. Makalintal, *En Banc*].

*Several circumstances compelled us to go into the record of this case in order to find out whether or not it falls within the exceptions above stated*: first, the findings of the Court of Appeals are contrary to those of the trial court; second, said findings are in the nature of conclusions, without citation of the specific evidences on which they are based; and third, the facts set forth in the petition as well as in the petitioners' main and reply briefs, with the corresponding references to the record, are not disputed by the respondents. These facts are necessary for a clear understanding and proper resolution of the issue of rescission in this case.[157] (Emphasis supplied)

The three (3) circumstances in *Garcia* that compelled this court to look into the records of the case to determine whether an exception exists were then included as exceptions to the rule in *Tolentino v. De Jesus*[158] and subsequent cases.[159] In *Remalante v. Tibe*,[160] this court, in a footnote, discussed:

In *Sacay v. Sandiganbayan*, the Court enumerated four more exceptions:

. . . (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

However, in *Garcia*, the Court considered exception Nos. 7, 8 and 9 as circumstances that, taken together, compelled it to go into

---

[157] *Id*. at 618-619, *citing Roque v. Buan, et al.*, 128 Phil. 738, 746-747 (1967) [Per *J*. Angeles, *En Banc*]; *Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al.*, 125 Phil. 701, 704 (1967) [Per *J*. J. P. Bengzon, *En Banc*]; and *Hilario v. The City of Manila, et al.*, 128 Phil. 100, 101 (1967) [Per *J*. J. P. Bengzon, *En Banc*].

[158] 155 Phil. 144, 151 (1974) [Per *J*. Makasiar, First Division].

[159] *Sacay v. Sandiganbayan*, 226 Phil. 496, 512 (1986) [Per *J*. Feria, *En Banc*] and *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 454 (2009) [Per *J*. Chico-Nazario, Third Division].

[160] 241 Phil. 930 (1988) [Per *J*. Cortes, *En Banc*].

the record of the case in order to find out whether or not it fell within any of the six established exceptions.

On the other hand, exception No. 10 may be considered as an illustration of the fourth exception — that the judgment is based on a misapprehension of facts.[161]

Petitioner failed to show why the factual findings of the Court of Appeals are without any basis. Petitioner does not dispute the tax declarations relied upon by the Court of Appeals. Instead, petitioner insists that the testimony of Antonio Gonzales should be given weight despite the valid and substantial basis provided by the Court of Appeals to find otherwise. She still failed to clarify and explain the anomaly between Antonio Gonzales' testimony on the purchase price of the fishpond sold to Precillano Gonzales Development Corporation and the provision on the purchase price in the Deed of Sale presented.

We do not find any compelling reason to review the factual findings of the Court of Appeals. It is time for this long dispute that has vexed both parties to be finally laid to rest.

**WHEREFORE,** the Petition for Review is **DENIED**.

**SO ORDERED.**

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

---

[161] *Id*. at 936, *citing Sacay v. Sandiganbayan*, 226 Phil. 496, 512 (1986) [Per *J*. Feria, *En Banc*]; *Garcia, et al. v. Court of Appeals, et al.*, 144 Phil. 615, 619 (1970) [Per *J*. Makalintal, *En Banc*]; and *Salazar v. Gutierrez, et al.*, 144 Phil. 233, 239 (1970) [Per *J*. Makalintal, *En Banc*].

**SECOND DIVISION**

[G.R. No. 173137. January 11, 2016]

**BASES CONVERSION DEVELOPMENT AUTHORITY**, *petitioner, vs.* **DMCI PROJECT DEVELOPERS, INC**., *respondent.*

[G.R. No. 173170. January 11, 2016]

**NORTH LUZON RAILWAYS CORPORATION,** *petitioner, vs.* **DMCI PROJECT DEVELOPERS, INC**., *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUE OF DETERMINING THE SCOPE OF AN ARBITRATION CLAUSE INVOLVED A PURELY QUESTION OF LAW WHICH IS PROPER IN A PETITION FOR REVIEW ON *CERTIORARI*.—** At the outset, we must state that BCDA and Northrail invoked the correct remedy. Rule 45 is applicable when the issues raised before this court involved purely questions of law. x x x BCDA and Northrail primarily ask us to construe the arbitration clause in the Joint Venture Agreement. They assert that the clause does not bind DMCI-PDI and Northrail. This issue is a question of law. It does not require us to examine the probative value of the evidence presented. The prayer is essentially for this court to determine the scope of an arbitration.

2. **ID.; REPUBLIC ACT NO. 9285 (AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION AND FOR OTHER PURPOSES); ARBITRATIONS, DEFINED; THE STATE ADOPTS A POLICY IN FAVOR OF ARBITRATION; SUSTAINED.—** Arbitration is a mode of settling dispute between parties. Like many alternative dispute resolution processes, it is a product of the meeting of minds of parties submitting a pre-defined set of dispute. They agree among themselves to a process of dispute resolution that avoids extended litigation. The state adopts a

policy in favor of arbitration. Republic Act No. 9285 expresses this policy. x x x Our policy in favor of party autonomy in resolving disputes has been reflected in our laws as early as 1949 when our Civil Code was approved. Republic Act No. 876 later explicitly recognized the validity and enforceability of parties' decision to submit disputes and related issues to arbitration. Arbitration agreements are liberally construed in favor of proceeding to arbitration. We adopt the interpretation that would render effective an arbitration clause if the terms of the agreement allow for such interpretation. x x x This manner of interpreting arbitration clauses is made explicit in Section 25 of Republic Act No. 9285.

**3. CIVIL LAW; CIVIL CODE; CONTRACTS; A WHOLE CONTRACT MAY BE CONTAINED IN SEVERAL DOCUMENTS THAT ARE CONSISTENT WITH ONE ANOTHER; EXPLAINED.—** There is no rule that a contract should be contained in a single document. A whole contract may be contained in several documents that are consistent with one other. Moreover, at any time during the lifetime of an agreement, circumstances may arise that may cause the parties to change or add to the terms they previously agreed upon. Thus, amendments or supplements to the agreement may be executed by contracting parties to address the circumstances or issues that arise while a contract subsists. When an agreement is amended, some provisions are changed. Certain parts or provisions may be added, removed, or corrected. These changes may cause effects that are inconsistent with the wordings of the contract before the changes were applied. In that case, the old provisions shall be deemed to have lost their force and effect, while the changes shall be deemed to have taken effect. Provisions that are not affected by the changes usually remain effective. When a contract is supplemented, new provisions that are not inconsistent with the old provisions are added. The nature, scope, and terms and conditions are expanded. In that case, the old and the new provisions form part of the contract.

**4. ID.; ID.; ID.; ASSIGNMENT AND NOMINATION, DISTINGUISHED; NOMINATION, ESTABLISHED IN CASE AT BAR.—** Based on DMCI-PDI's letter to BCDA and Northrail dated April 4, 1997, D.M. Consunji, Inc. designated DMCI-PDI as its nominee for the agreements it entered into in relation to the project. x x x Thus, lack of consent to the

assignment is irrelevant because there was no assignment or transfer of rights to DMCI-PDI. DMCI-PDI was D.M. Consunji, Inc.'s nominee. Section 17.2 of the Joint Venture Agreement clearly shows an intent to treat assignment and nomination differently. x x x Assignment involves the transfer of rights after the perfection of a contract. Nomination pertains to the act of naming the party with whom it has a relationship of trust or agency. In *Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Republic,* this court defined "nominee" as follows: In its most common signification, the term "*nominee*" refers to one who is designated to act for another usually in a limited way; a person in whose name a stock or bond certificate is registered but who is not the actual owner thereof is considered a nominee." x x x Contrary to BCDA and Northrail's position, therefore, the agreement's prohibition against transfers, conveyance, and assignment of rights without the consent of the other party does not apply to nomination.

**5. ID.; ID.; ID.; THE COURT RECOGNIZES THAT THERE ARE INSTANCES WHEN NON-SIGNATORIES TO A CONTRACT MAY BE COMPELLED TO SUBMIT TO ARBITRATION; PRESENT IN CASE AT BAR.—** In *Lanuza v. BF Corporation*, we recognized that there are instances when non-signatories to a contract may be compelled to submit to arbitration. Among those instances is when a non-signatory is allowed to invoke rights or obligations based on the contract. x x x When Northrail demanded for the amount of D.M. Consunji, Inc.'s subscription based on the agreements and later accepted the latter's funds, it proved that it was bound by the agreements' terms. It is also deemed to have accepted the term that such funds shall be used for its privatization. It cannot choose to demand the enforcement of some of its provisions if it is in its favor, and then later by whim, deny being bound by its terms. x x x There is, therefore, merit to DMCI-PDI's argument that if the Civil Code gives third party beneficiaries to a contract the right to demand the contract's fulfillment in its favor, the reverse should also be true. A beneficiary who communicated his or her acceptance to the terms of the agreement before its revocation may be compelled to abide by the terms of an agreement, including the arbitration clause. In this case, Northrail is deemed to have communicated its acceptance of the terms of the agreements when it accepted D.M. Consunji, Inc.'s funds.

**APPEARANCES OF COUNSEL**

*Ongkiko Manhit Custodio & Acorda* for petitioner.
*Aguirre Aportadera & Sandico Law Offices* for respondent.
*Office of the Government Corporate Counsel* for petitioner *Northrail.*

**D E C I S I O N**

**LEONEN, *J.*:**

An arbitration clause in a document of contract may extend to subsequent documents of contract executed for the same purpose. Nominees of a party to and beneficiaries of a contract containing an arbitration clause may become parties to a proceeding initiated based on that arbitration clause.

On June 10, 1995, Bases Conversion Development Authority (BCDA) entered into a Joint Venture Agreement[1] with Philippine National Railways (PNR) and other foreign corporations.[2]

Under the **Joint Venture Agreement**, the parties agreed to construct a railroad system from Manila to Clark with possible extensions to Subic Bay and La Union and later, possibly to Ilocos Norte and Nueva Ecija.[3] BCDA shall establish North Luzon Railways Corporation (Northrail) for purposes of constructing, operating, and managing the railroad system.[4] The Joint Venture Agreement contained the following provision:

**ARTICLE XVI**

**ARBITRATION**

16. If any dispute arise hereunder which cannot be settled by mutual accord between the parties to such dispute, then that dispute shall be referred to arbitration. The arbitration shall

---

[1] *Rollo* (G.R. No. 173137), pp. 104-120.

[2] *Id*. at 46.

[3] *Id*. at 106.

[4] *Id*. at 108.

> be held in whichever place the parties to the dispute decide and failing mutual agreement as to a location within twenty-one (21) days after the occurrence of the dispute, shall be held in Metro Manila and shall be conducted in accordance with the Philippine Arbitration Law (Republic Act No. 876) supplemented by the Rules of Conciliation and Arbitration of the International Chamber of Commerce. All award of such arbitration shall be final and binding upon the parties to the dispute.[5]

BCDA organized and incorporated Northrail.[6] Northrail was registered with the Securities and Exchange Commission on August 22, 1995.[7]

BCDA invited investors to participate in the railroad project's financing and implementation. Among those invited were D.M. Consunji, Inc. and Metro Pacific Corporation.[8]

On February 8, 1996, the **Joint Venture Agreement was amended to include D.M. Consunji, Inc. and/or its nominee as party**.[9] Under the amended Joint Venture Agreement, D.M. Consunji, Inc. shall be an additional investor of Northrail.[10] It shall subscribe to 20% of the increase in Northrail's authorized capital stock.[11]

On February 8, 1996, BCDA and the other parties to the Joint Venture Agreement, including D.M. Consunji, Inc. and/or its nominee, entered into a **Memorandum of Agreement**.[12] Under this agreement, the parties agreed that the initial seed capital of ₱600 million shall be infused to Northrail.[13] Of that

---

[5] *Id*. at 116-117.

[6] *Id*. at 62.

[7] *Rollo* (G.R. No. 173170), p. 74.

[8] *Rollo* (G.R. No. 173137), p. 47.

[9] *Id*. at 122-123.

[10] *Id*. at 47 and 123.

[11] *Id*.

[12] *Id*. at 48 and 126-132.

[13] *Id*. at 48.

amount, 200 million shall be D.M. Consunji, Inc.'s share, which shall be converted to equity upon Northrail's privatization.[14] Later, D.M. Consunji, Inc.'s share was increased to ₱300 million.[15]

Upon BCDA and Northrail's request,[16] DMCI Project Developers, Inc. (DMCI-PDI) deposited 300 million into Northrail's account with Land Bank of the Philippines.[17] The deposit was made on August 7, 1996[18] for its "future subscription of the Northrail shares of stocks."[19] In Northrail's 1998 financial statements submitted to the Securities and Exchange Commission, this amount was reflected as "Deposits For Future Subscription."[20] At that time, Northrail's application to increase its authorized capital stock was still pending with the Securities and Exchange Commission.[21]

**In letters[22] dated April 4, 1997, D.M. Consunji, Inc. informed PNR and the other parties that DMCI-PDI shall be its designated nominee for all the agreements it entered and would enter with them in connection with the railroad project.** Pertinent portions of the letters provide:

> [I]n order to formalize the inclusion of [DMCI Project Developers, Inc.] as a party to the JVA and MOA, DMCI would like to notify all the parties *that it is designating PDI as its nominee in both agreements and such other agreements that may be signed by the parties in furtherance of or in connection with the PROJECT.* By this nomination, all the rights, obligations, warranties and commitments of DMCI

---

[14] *Id*. at 48 and 129.

[15] *Id*. at 48.

[16] *Id*. at 134.

[17] *Id*. at 48 and 135.

[18] *Id*. at 48, 64, and 135-136.

[19] *Id*. at 48, 65, and 136.

[20] *Rollo* (G.R. No. 173170), p. 37.

[21] *Rollo* (G.R. No. 173137), p. 48.

[22] *Id*. at 137-140.

under the JVA and MOA shall henceforth be assumed performed and delivered by PDI.[23] (Emphasis supplied)

Later, Northrail withdrew from the Securities and Exchange Commission its application for increased authorized capital stock.[24] Moreover, according to DMCI-PDI, BCDA applied for Official Development Assistance from Obuchi Fund of Japan.[25] This required Northrail to be a 100% government-owned and controlled corporation.[26]

On September 27, 2000, DMCI-PDI started demanding from BCDA and Northrail the return of its ₱300 million deposit.[27] DMCI-PDI cited Northrail's failure to increase its authorized capital stock as reason for the demand.[28] BCDA and Northrail refused to return the deposit[29] for the following reasons:

a) At the outset, DMCI PDI/FBDC's participation in Northrail was as a joint venture partner and co-investor in the Manila Clark Rapid Railway Project, and as such, was granted corresponding representation in the Northrail Board.

b) DMCI PDI/FBDC was privy to all the deliberations of the Northrail Board and participated in the decisions made and policies adopted to pursue the project.

c) DMCI PDI/FBDC had full access to the financial statements of Northrail and was regularly informed of the corporation's financial condition.[30]

Upon BCDA's request, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 116, Series of

---

[23] *Id*. at 137 and 139.

[24] *Id*. at 48 and 65.

[25] *Id*. at 66.

[26] *Id*.

[27] *Id*. at 48 and 146-147.

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

[29] *Id*. at 48.

[30] *Id*. at 151-152 and 467.

2001[31] on June 27, 2001. The OGCC stated that "since no increase in capital stock was implemented, it is but proper to return the investments of both FBDC and DMCI[.]"[32]

In a January 19, 2005 letter,[33] DMCI-PDI reiterated the request for the refund of its ₱300 million deposit for future Northrail subscription. On March 18, 2005, BCDA denied[34] DMCI-PDI's request:

> We regret to say that we are of the position that the ₱300 [million] contribution should not be returned to DMCI for the following reasons:
>
> a. the ₱300 million was in the nature of a contribution, not deposits for future subscription; and
>
> b. DMCI, as a joint venture partner, must share in profits and losses.[35]

On August 17, 2005,[36] DMCI-PDI served a demand for arbitration to BCDA and Northrail, citing the arbitration clause in the June 10, 1995 Joint Venture Agreement.[37] BCDA and Northrail failed to respond.[38]

DMCI-PDI filed before the Regional Trial Court of Makati[39] a Petition to Compel Arbitration[40] against BCDA and Northrail, pursuant to the alleged arbitration clause in the Joint Venture

---

[31] *Id*. at 150-154.

[32] *Id*. at 153.

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

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

[35] *Id*. at 177.

[36] *Id*. at 49.

[37] *Id*. at 49, 59, and 76.

[38] *Id*. at 49 and 70.

[39] *Id*. at 46. The petition was raffled to Branch 150, Judge Elmo M. Alameda.

[40] *Id*. at 58-74.

Agreement.[41] DMCI-PDI prayed for "an order directing the parties to proceed to arbitration in accordance with the terms and conditions of the agreement."[42]

BCDA filed a Motion to Dismiss[43] on the ground that there was no arbitration clause that DMCI-PDI could enforce since DMCI-PDI was not a party to the Joint Venture Agreement containing the arbitration clause.[44] Northrail filed a separate Motion to Dismiss[45] on the ground that the court did not have jurisdiction over it and that DMCI-PDI had no cause for arbitration against it.[46]

In the Decision[47] dated February 9, 2006, the trial court denied BCDA's and Northrail's Motions to Dismiss and granted DMCI-PDI's Petition to Compel Arbitration. The dispositive portion of the decision reads:

> WHEREFORE, the petition is granted. The parties are ordered to present their dispute to arbitration in accordance with Article XVI of the Joint Agreement.
>
> SO ORDERED.[48]

The trial court ruled that the arbitration clause in the Joint Venture Agreement should cover all subsequent documents including the amended Joint Venture Agreement and the Memorandum of Agreement. The three (3) documents constituted one contract for the formation and funding of Northrail.[49]

The trial court also ruled that even though DMCI-PDI was not a signatory to the Joint Venture Agreement and the

---

[41] *Id*. at 15.

[42] *Id*. at 49.

[43] *Id*. at 218-223.

[44] *Id*. at 221.

[45] *Rollo* (G.R. No. 173170), pp. 66-73.

[46] *Id*. at 17 and 67-68.

[47] *Rollo* (G.R. No. 173137), pp. 46-54.

[48] *Id*. at 54.

[49] *Id*. at 52.

Memorandum of Agreement, it was an assignee of D.M. Consunji, Inc.'s rights. Therefore, it could invoke the arbitration clause in the Joint Venture Agreement.[50]

In an Order[51] dated June 9, 2006, the trial court denied BCDA and Northrail's Motion for Reconsideration of the February 9, 2006 trial court Decision.

BCDA filed a Rule 45 Petition before this court, assailing the February 9, 2006 trial court Order granting DMCI-PDI's Petition to Compel Arbitration and the June 9, 2006 Order denying BCDA and Northrail's Motion for Reconsideration.[52]

The issue in this case is whether DMCI-PDI may compel BCDA and Northrail to submit to arbitration.

BCDA argued that only the parties to an arbitration agreement can be bound by that agreement.[53] The arbitration clause that DMCI-PDI sought to enforce was in the Joint Venture Agreement, to which DMCI-PDI was not a party.[54] There was also no evidence that the right to compel arbitration under the Joint Venture Agreement was assigned to DMCI-PDI.[55] Assuming that there was such an assignment, BCDA did not consent to or recognize it.[56] Therefore, the trial court's conclusion that DMCI-PDI was D.M. Consunji, Inc.'s assignee had no basis.[57] In BCDA's view, DMCI-PDI had no right to compel BCDA to submit to arbitration.[58]

---

[50] *Id*.

[51] *Id*. at 55-56.

[52] *Id*. at 12-13.

[53] *Id*. at 24.

[54] *Id*. at 25.

[55] *Id*. at 25-26.

[56] *Id*. at 31.

[57] *Id*. at 27.

[58] *Id*. at 25.

BCDA also argued that the trial court decided the Motion to Dismiss in violation of the parties' right to due process. The trial court should have conducted a hearing so that the parties could have presented their respective positions on the issue of assignment. The trial court merely accepted DMCI-PDI's allegations, without basis.[59]

In a separate Petition for Review,[60] Northrail argued that it cannot be compelled to submit itself to arbitration because it was not a party to the arbitration agreement.[61]

Northrail also argued that DMCI-PDI cannot initiate an action to compel BCDA and Northrail to arbitration because DMCI-PDI itself was not a party to the arbitration agreement. DMCI-PDI was not D.M. Consunji, Inc.'s assignee because BCDA did not consent to that assignment.[62]

In its Comment[63] on BCDA's Petition, DMCI-PDI argued that Rule 45 was a wrong mode of appeal.[64] The issues raised by BCDA did not involve questions of law.[65]

DMCI-PDI pointed out that BCDA breached their agreement when it failed to apply the ₱300 million deposit to Northrail subscriptions. It turned out that such application was rendered impossible by the alleged loan requirement that Northrail be wholly owned by the government and by Northrail's withdrawal from the Securities and Exchange Commission of its application for an increase in authorized capital stock.[66]

---

[59] *Id*. at 34-35.

[60] *Rollo* (G.R. No. 173170), pp. 13-30.

[61] *Id*. at 24.

[62] *Id*. at 25-26.

[63] *Rollo* (G.R. No. 173137), pp. 291-375.

[64] *Id*. at 293-294.

[65] *Id*.

[66] *Id*. at 317-318.

DMCI-PDI also argued that it is an assignee and nominee of D.M. Consunji, Inc., which is a party to the contracts. Therefore, it is also a party to the arbitration clause.[67]

DMCI-PDI contended that the arbitration agreement extended to all documents relating to the project.[68] Even though the agreement was expressed only in the Joint Venture Agreement, its effect extends to the amendment to the Joint Venture Agreement and Memorandum of Agreement.[69]

DMCI-PDI emphasized that BCDA had always recognized it as D.M. Consunji's assignee in its correspondences with the OGCC and with the President of DMCI, Mr. Isidro Consunji.[70] In those letters, BCDA described DMCI-PDI's participation as being the "joint venture partner . . . and co- investor in the Manila Clark Rapid Railway Project[.]"[71] Hence, it is now estopped from denying its personality in this case.[72]

We rule for DMCI-PDI.

I

**The state has a policy in favor of arbitration**

At the outset, we must state that BCDA and Northrail invoked the correct remedy. Rule 45 is applicable when the issues raised before this court involved purely questions of law. In *Villamor v. Balmores*:[73]

[t]here is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether

---

[67] *Id*. at 336-337.

[68] *Id*. at 339.

[69] *Id*. at 339 and 364-365.

[70] *Id*. at 345.

[71] *Id*. at 346.

[72] *Id*. at 349.

[73] G.R. No. 172843, September 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/ jurisprudence/2014/september2014/172843.pdf> [Per *J*. Leonen, Second Division].

the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.[74]

BCDA and Northrail primarily ask us to construe the arbitration clause in the Joint Venture Agreement. They assert that the clause does not bind DMCI-PDI and Northrail. This issue is a question of law. It does not require us to examine the probative value of the evidence presented. The prayer is essentially for this court to determine the scope of an arbitration clause.

Arbitration is a mode of settling disputes between parties.[75] Like many alternative dispute resolution processes, it is a product of the meeting of minds of parties submitting a pre-defined set of disputes. They agree among themselves to a process of dispute resolution that avoids extended litigation.

The state adopts a policy in favor of arbitration. Republic Act No. 9285[76] expresses this policy:

SEC. 2. *Declaration of Policy*. - It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. *Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.* As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR.

---

[74] *Id*. at 8, *citing Central Bank of the Philippines v. Castro*, 514 Phil. 425, 434 (2005) [Per *J*. Puno, Second Division].

[75] *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> p. 9 [Per *J*. Leonen, Second Division].

[76] An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes (2004).

This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time. (Emphasis supplied)

Our policy in favor of party autonomy in resolving disputes has been reflected in our laws as early as 1949 when our Civil Code was approved.[77] Republic Act No. 876[78] later explicitly recognized the validity and enforceability of parties' decision to submit disputes and related issues to arbitration.[79]

Arbitration agreements are liberally construed in favor of proceeding to arbitration.[80] We adopt the interpretation that would render effective an arbitration clause if the terms of the agreement allow for such interpretation.[81] In *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,*[82] this court said:

Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration.[83]

---

[77] CIVIL CODE, Arts. 2028-2046.

[78] An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes (1953).

[79] *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> p. 9 [Per *J.* Leonen, Second Division].

[80] *Id*. at 10. *See also LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,* 447 Phil. 705, 714 (2003) [Per *J.* Panganiban, Third Division].

[81] *Id*. at 11. *See also LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,* 447 Phil. 705, 714 (2003) [Per *J.* Panganiban, Third Division].

[82] 447 Phil. 705 (2003) [Per *J.* Panganiban, Third Division].

[83] *Id*. at 714.

This manner of interpreting arbitration clauses is made explicit in Section 25 of Republic Act No. 9285:

> SEC. 25. *Interpretation of the Act.*–In interpreting the Act, the court shall have due regard to the policy of the law in favor of arbitration. Where action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

Hence, we resolve the issue of whether DMCI-PDI may compel BCDA and Northrail to submit to arbitration proceedings in light of the policy in favor of arbitration.

BCDA and Northrail assail DMCI-PDI's right to compel them to submit to arbitration based on the assumption that DMCI-PDI was not a party to the agreement containing the arbitration clause.

Three documents — (a) Joint Venture Agreement, (b) amended Joint Venture Agreement, and (c) Memorandum of Agreement — represent the agreement between BCDA, Northrail, and D.M. Consunji, Inc. Among the three documents, only the Joint Venture Agreement contains the arbitration clause. DMCI-PDI was allegedly not a party to the Joint Venture Agreement.

To determine the coverage of the arbitration clause, the relation among the three documents and DMCI-PDI's involvement in the execution of these documents must first be understood.

The Joint Venture Agreement was executed by BCDA, PNR, and some foreign corporations.[84] The purpose of the Joint Venture Agreement was for the construction of a railroad system from Manila to Clark with a possible extension to Subic Bay and later to San Fernando, La Union, Laoag, Ilocos Norte, and San Jose, Nueva Ejica.[85] Under the Joint Venture Agreement, BCDA

---

[84] *Rollo* (G.R. No. 173137), p. 105. The foreign corporations are Construcciones Y Auxiliar De Ferrocarriles, S.A., Entrecanales Y Tavora, S.A., Cubiertas Y Mzov, S.A., and Cobra Instalaciones Y Servicios, S.A.

[85] *Id*. at 106.

agreed to incorporate Northrail, which shall have an authorized capital stock of ₱5.5 billion.[86] The parties agreed that BCDA/PNR shall have a 30% equity with Northrail.[87] Other Filipino partners shall have a total of 50% equity, while foreign partners shall have at most 20% equity.[88] Pertinent provisions of the Joint Venture Agreement are as follows:

**JOINT VENTURE AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

This **Joint Venture Agreement (JVA)** made and executed at Makati, Metro Manila, this day of June 1995 by and between:

The **BASES CONVERSION DEVELOPMENT AUTHORITY** . . . hereinafter referred to as **BASECON**;

The **PHILIPPINE NATIONAL RAILWAYS** . . .;

The following corporations collectively referred to as the **Foreign Group:**

a) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES,** S.A. . . .;

b) **ENTRECANALES Y TAVORA, SA** . . .;

c) **CUBIERTAS MZOV, S.A.** . . .;

d) **COBRA, S.A.** . . .; and

e) Others who may later participate in the JVA.

- and -

**EUROMA DEVELOPMENT CORPORATION** . . .

**WITNESSETH:**

. . . .

**WHEREAS,** a project identified pursuant to the aforesaid policy is the establishment of a Premier International Airport Complex located

---

[86] *Id*. at 108.

[87] *Id*. at 110.

[88] *Id*.

at the former Clark Air Base as expressed in Executive Order 174 s. 1994 in order to accommodate the expected heavy flow of passenger and cargo traffic to and from the Philippines, to start the development of the Northern Luzon Grid and to accelerate the development of Central Luzon and finally to decongest Metro Manila of its vehicular traffic;

. . . .

**WHEREAS,** in order to implement and provide such a mass transit and access system, the parties hereto agreed to construct a double-trac[k] railway system from Manila to Clark with a possible extension to Subic Bay and later to San Fernando, La Union, as the second phase, and finally to Laoag, Ilocos Norte and to San Jose, Nueva Ecija, as the third phase of the project, hereinafter referred to as the **PROJECT;**

. . . .

**ARTICLE I**

**DEFINITION OF TERMS**

. . . .

**1.5 "PROJECT"** means the construction, operation and management of a double-track railway system from Manila to Clark with an extension to Subic Bay, and a possible extension to San Fernando, La Union, as the second phase, and finally to Laoag, Ilocos Norte and to San Jose, Nueva Ecija, as the third phase of the PROJECT.

**1.6 "North Luzon Railways Corporation (NORTHRAIL)["]** means the joint venture corporation to be established in accordance with Article II hereof.

. . . .

**ARTICLE II**

**THE NORTH LUZON RAILROAD CORPORATION**

**2.1** BASECON shall establish and incorporate in accordance with the laws of the Republic of the Philippines a corporation to be known as **NORTH LUZON RAILWAYS CORPORATION (NORTHRAIL)** with an initial capitalization of one hundred million pesos (₱100,000,000.00).

**2.2** NORTHRAIL shall eventually have an authorized capital stock of FIVE BILLION FIVE HUNDRED MILLION PESOS (₱ 5.5 Billion) divided into 55,000,000 shares with par value of ₱ 100 per share.

. . . .

**ARTICLE III**

**PURPOSE OF NORTHRAIL**

**A. PRIMARY PURPOSE**

**3.1** To construct, operate and manage a railroad system to serve Northern and Central Luzon; and to develop, construct, manage, own, lease, sublease and operate establishments and facilities of all kinds related to the railroad system;

. . . .

**ARTICLE IV**

**PARTICIPATION/TRANSFER/ENCUMBRANCE OF SHARES**

**4.1** NORTHRAIL shall increase its authorized capital stock upon the subscription thereon by the parties to this JVA in accordance with the following equity proportion/participation:

| | | |
|---|---|---|
| Foreign Group | up to | 20% |
| Euroma/Filipino partners | | 50% |
| BASECON/PNR | | 30% |

. . . .

**4.4** The shares owned by Filipino stockholders including BASECON, PNR, EUROMA Development Corporation and hereinafter to be owned by Filipino corporations shall not be less than sixty percent (60%) at any given time.

. . . .

**ARTICLE XVI**

**ARBITRATION**

**16.** If any dispute arise hereunder which cannot be settled by mutual accord between the parties to such dispute, then that dispute shall be referred to arbitration. The arbitration shall

be held in whichever place the parties to the dispute decide and failing mutual agreement as to a location within twenty-one (21) days after the occurrence of the dispute, shall be held in Metro Manila and shall be conducted in accordance with the Philippine Arbitration Law (Republic Act No. 876) as supplemented by the Rules of Conciliation and Arbitration of the International Chamber of Commerce. All award of such arbitration shall be final and binding upon the parties to the dispute.

**ARTICLE XVII**

**ASSIGNMENT**

**17.1** No party to this Agreement may assign, transfer or convey this Agreement, create or incur any encumbrance of its rights or any part of its rights and obligations hereunder or any shares of stocks of NORTHRAIL to any person, firm or corporation without the prior written consent of the other parties or except as provided in the Articles of Incorporation and By-Laws of NORTHRAIL and this Agreement.

**17.2** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees and designees or nominees whenever possible.[89]

The Joint Venture Agreement was amended on February 8, 1996[90] to include D.M. Consunji, Inc. and/or its nominee as party.[91] The participations of the parties in Northrail were also modified.[92] Pertinent provisions of the amended Joint Venture Agreement are reproduced as follows:

This Amendment to the Joint Venture Agreement dated 10th of June 1995 (the *Agreement*) made and executed at _____, Metro Manila, on this 8th day of February 1996 by and among:

---

[89] *Id*. at 105-117.

[90] *Id*. at 122.

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

[92] *Id*. at 122-123.

**BASES CONVERSION DEVELOPMENT AUTHORITY** . . . hereinafter referred to as **BASECON;**

with

**PHILIPPINE NATIONAL RAILWAYS** . . .

and

The following corporations collectively referred to as the **FOREIGN GROUP:**

**CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES, S.A.** . . .;

**ENTRECANALES Y TAVORA, S.A.** . . .;

**CUBIERTAS Y MZOV, S.A.** . . .;

**COBRA INSTALACIONES Y SERVICIOS, S.A.** . . .; and

Other investors who may later participate in the Joint Venture;

and

Other local investors to be represented by **EUROMA DEVELOPMENT CORPORATION** . . .

and

**D.M. CONSUNJI, INC**. and/or its nominee. . .

**WITNESSETH THAT**

**WHEREAS,** a Joint Venture Agreement (JVA) was executed on the 10th of June 1995 between BASECON, PNR, FOREIGN GROUP, and EUROMA;

. . . .

**NOW, THEREFORE,** for and in consideration of the foregoing premises and of the mutual covenant contained therein, **THE PARTIES HEREBY AGREE** that the JVA should be amended as follows:

1. **In Article 1.3,** D.M. CONSUNJI, INC. shall be included as strategic partner, being one of the Philippine registered companies selected by BASECON, PNR and

the Lead Group on the basis of its qualifications for the implementation of the Project.

2. **Article 4.1** should read as follows: "NORTHRAIL shall increase its authorized capital stock upon the subscription thereon by the Parties to this JVA in accordance with the following equity proportion/ participation:

   SRG……..up to 10%
   DMCI……20%
   BASECON/PNR……..……up to 30%
   Others……..……..40%

3. **In Article 4.4,** the Filipino corporations whose total shares in NORTHRAIL's capital stock, which should not be less than sixty percent (60%) at any given time, shall include D.M. CONSUNJI, INC.[93] (Underscoring supplied)

On February 8, 1996, the same date of the execution of the amended Joint Venture Agreement, the same parties executed a Memorandum of Agreement[94] "to set up the mechanics for raising the seed capitalization needed by NORTHRAIL[.]"[95] Pertinent provisions of the Memorandum of Agreement are reproduced as follows:

**WITNESSETH THAT**

**WHEREAS,** the Manila – Clark Rapid Railway System Project, hereinafter referred to as the *Project,* was identified as one of the major infrastructure projects to accelerate the development of Central Luzon, particularly the former U.S. bases at Clark and Subic;

. . . .

**WHEREAS,** the North Luzon Railways Corporation (NORTHRAIL) was organized and incorporated to implement the development, construction, operation and maintenance of the railway system in Northern Luzon;

---

[93] *Id*.

[94] *Id*. at 126-132.

[95] *Id*. at 128.

**WHEREAS,** NORTHRAIL is wholly owned and controlled by BASECON;

**WHEREAS,** the privatization of NORTHRAIL is necessary in order to accelerate the implementation of the Project by tapping the financial resources and expertise of the private sector;

. . . .

**WHEREAS,** the Parties of the Joint Venture Agreement (JVA) of 10 June 1995, namely BASECON, PNR, SPANISH RAILWAY GROUP and EUROMA, agreed to invite other private investors to help in the financing and implementation of the Project, and to raise the required equity in order to accelerate the privatization of NORTHRAIL;

**WHEREAS,** DMCI and other private investors. . . have manifested their desire to be strategic partners in implementing the Project;

**WHEREAS,** DMCI and other private investors have the financial capability to implement the Project;

**WHEREAS,** Phase I of the Project covers the Manila – Clark section of the North Luzon railway network as defined by the JVA of 10 June 1995 . . .[;]

. . . .

**ARTICLE I**

**PURPOSE**

**1.1 Purpose.** This Agreement is entered into by the Parties in order to set up the mechanics for raising the seed capitalization needed by NORTHRAIL to accelerate the implementation of the Project.

. . . .

**ARTICLE II**

**TERMS OF AGREEMENT**

**2.1** The Parties agree to put up the necessary seed capitalization needed by NORTHRAIL to fast-track the implementation of the Rapid Rail Transit System Project according to the following schedule:

BCDA/PNR ……..….....PHP 300 Million
DMCI……...…….....PHP 200 Million

SRG……PHP 100 Million

TOTAL……PHP 600 Million

. . . .

**2.3** The amounts contributed by BCDA/PNR, DMCI, SRG, and others are committed to be converted to equity when NORTHRAIL is privatized.[96]

There is no rule that a contract should be contained in a single document.[97] A whole contract may be contained in several documents that are consistent with one other.[98]

Moreover, at any time during the lifetime of an agreement, circumstances may arise that may cause the parties to change or add to the terms they previously agreed upon. Thus, amendments or supplements to the agreement may be executed by contracting parties to address the circumstances or issues that arise while a contract subsists.

When an agreement is amended, some provisions are changed. Certain parts or provisions may be added, removed, or corrected. These changes may cause effects that are inconsistent with the wordings of the contract before the changes were applied. In that case, the old provisions shall be deemed to have lost their force and effect, while the changes shall be deemed to have taken effect. Provisions that are not affected by the changes usually remain effective.

When a contract is supplemented, new provisions that are not inconsistent with the old provisions are added. The nature, scope, and terms and conditions are expanded. In that case, the old and the new provisions form part of the contract.

A reading of all the documents of agreement shows that they were executed by the same parties. Initially, the Joint Venture

---

[96] *Id*. at 127-129.

[97] *See also BF Corporation v. Court of Appeals*, 351 Phil. 507, 523 (1998) [Per *J*. Romero, Third Division].

[98] *Id*.

Agreement was executed only by BCDA, PNR, and the foreign corporations. When the Joint Venture Agreement was amended to include D.M. Consunji, Inc. **and/or its nominee**, D.M. Consunji, Inc. and/or its nominee were deemed to have been also a party to the original Joint Venture Agreement executed by BCDA, PNR, and the foreign corporations. D.M. Consunji, Inc. and/or its nominee became bound to the terms of both the Joint Venture Agreement and its amendment.

Moreover, each document was executed to achieve the single purpose of implementing the railroad project, such that documents of agreement succeeding the original Joint Venture Agreement merely amended or supplemented the provisions of the original Joint Venture Agreement.

The first agreement — the Joint Venture Agreement — defined the project, its purposes, the parties, the parties' equity participation, and their responsibilities. The second agreement — the amended Joint Venture Agreement — only changed the equity participation of the parties and included D.M. Consunji, Inc. and/or its nominee as party to the railroad project. The third agreement — the Memorandum of Agreement — raised the seed capitalization of Northrail from ₱100 million as indicated in the first agreement to ₱600 million, in order to accelerate the implementation of the same project defined in the first agreement.

The Memorandum of Agreement is an implementation of the Joint Venture Agreement and the amended Joint Venture Agreement. It could not exist without referring to the provisions of the original and amended Joint Venture Agreements. It assumes a prior knowledge of its terms. Thus, it referred to "North Luzon railway network as defined by the JVA of 10 June 1995[.]"[99]

In other words, each document of agreement represents a step toward the implementation of the project, such that the three agreements must be read together for a complete understanding of the parties' whole agreement. The Joint Venture

---

[99] *Rollo* (G.R. No. 173137), p. 128.

Agreement, the amended Joint Venture Agreement, and the Memorandum of Agreement should be treated as one contract because they all form part of a whole agreement.

Hence, the arbitration clause in the Joint Venture Agreement should not be interpreted as applicable only to the Joint Venture Agreement's original parties. The succeeding agreements are deemed part of or a continuation of the Joint Venture Agreement. The arbitration clause should extend to all the agreements and its parties since it is still consistent with all the terms and conditions of the amendments and supplements.

II

BCDA and Northrail argued that they did not consent to D.M. Consunji, Inc.'s assignment of rights to DMCI-PDI. Therefore, DMCI-PDI did not validly become a party to any of the agreement. Section 17.1 of the Joint Venture Agreement provides that rights under the agreement may not be assigned, transferred, or conveyed without the consent of the other party.[100] Thus:

> **17.1** No party to this Agreement may assign, transfer or convey this Agreement, create or incur any encumbrance of its rights or any part of its rights and obligations hereunder or any shares of stocks of NORTHRAIL to any person, firm or corporation without the prior written consent of the other parties or except as provided in the Articles of Incorporation and By-Laws of NORTHRAIL and the Agreement.[101]

However, Section 17.2 of the Joint Venture Agreement provides that the agreement shall be binding on nominees:

> **17.2** This Agreement shall inure to the benefit of and be binding upon the parties . . . and their respective successors and permitted assignees *and designees or nominees* whenever applicable.[102] (Emphasis supplied)

---

[100] *Rollo* (G.R. No. 173170), p. 96.

[101] *Id*.

[102] *Id*.

The principal parties to the agreement after its amendment include D.M. Consunji, Inc. and/or its nominee:

**AMENDMENT TO THE JOINT VENTURE AGREEMENT**

This Amendment to the Joint Venture Agreement dated 10th of June 1995 (the *Agreement*) made and executed at _____, Metro Manila, on this 8th day of February 1996 by and among:

**BASES CONVERSION DEVELOPMENT AUTHORITY** . . .

with

**PHILIPPINE NATIONAL RAILWAYS** . . .

and

. . . .

***D.M. CONSUNJI, INC. and/or its nominee*,** a domestic corporation duly organized and created pursuant to the laws of the Republic of the Philippines . . .[103] (Emphasis supplied)

**MEMORANDUM OF AGREEMENT**

This Agreement made and executed at Pasig, Metro Manila, Philippines on this 8[th] day of February 1996 by and among:

**BASES CONVERSION DEVELOPMENT AUTHORITY** . . .

with

**PHILIPPINE NATIONAL RAILWAYS** . . .

and

***D.M. CONSUNJI, INC. and/or its nominee***, a domestic corporation duly organized and created pursuant to the laws of the Republic of the Philippines . . .[104] (Emphasis supplied)

Based on DMCI-PDI's letter to BCDA and Northrail dated April 4, 1997, D.M. Consunji, Inc. designated DMCI-PDI as its nominee for the agreements it entered into in relation to the project:

---

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

[104] *Id*. at 105.

[I]n order to formalize the inclusion of [DMCI Project Developers, Inc.] as a party to the JVA and MOA, DMCI would like to notify all the parties *that it is designating PDI as its nominee in both agreements and such other agreements that may be signed by the parties in furtherance of or in connection with the PROJECT.* By this nomination, all the rights, obligations, warranties and commitments of DMCI under the JVA and MOA shall henceforth be assumed performed and delivered by PDI.[105] (Emphasis supplied)

Thus, lack of consent to the assignment is irrelevant because there was no assignment or transfer of rights to DMCI-PDI. DMCI-PDI was D.M. Consunji, Inc.'s nominee.

Section 17.2 of the Joint Venture Agreement clearly shows an intent to treat assignment and nomination differently.

> **17.2** This Agreement shall inure to the benefit of and be binding upon the parties . . . and their respective successors and permitted *assignees and designees or nominees* whenever applicable.[106] (Emphasis supplied)

Assignment involves the transfer of rights after the perfection of a contract. Nomination pertains to the act of naming the party with whom it has a relationship of trust or agency.

In *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*,[107] this court defined "nominee" as follows:

> In its most common signification, the term "*nominee*" refers to one who is designated to act for another usually in a limited way; a person in whose name a stock or bond certificate is registered but who is not the actual owner thereof is considered a nominee." *Corpus Juris Secundum* describes a nominee as one:
>
> ". . . designated to act for another as his representative in a rather limited sense. It has no connotation, however, other than

---

[105] *Rollo* (G.R. No. 173137), pp. 137 and 139.

[106] *Rollo* (G.R. No. 173170), p. 96.

[107] G.R. Nos. 177857-58, January 24, 2012, 663 SCRA 514 [Per *J*. Velasco, Jr., *En Banc*].

> that of acting for another, in representation of another or as the grantee of another. In its commonly accepted meaning the term connoted the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment to the nominee of any property in, or ownership of, the rights of the person nominating him."[108] (Citations omitted)

Contrary to BCDA and Northrail's position, therefore, the agreement's prohibition against transfers, conveyance, and assignment of rights without the consent of the other party does not apply to nomination.

DMCI-PDI is a party to all the agreements, including the arbitration agreement. It may, thus, invoke the arbitration clause against all the parties.

III

Northrail, although not a signatory to the contracts, is also bound by the arbitration agreement.

In *Lanuza v. BF Corporation,*[109] we recognized that there are instances when non-signatories to a contract may be compelled to submit to arbitration.[110] Among those instances is when a non-signatory is allowed to invoke rights or obligations based on the contract.[111]

The subject of BCDA and D.M. Consunji, Inc.'s agreement was the construction and operation of a railroad system. Northrail was established pursuant to this agreement and its terms, and for the same purpose, thus:

---

[108] *Id*. at 580-581.

[109] G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/ jurisprudence/2014/october2014/174938.pdf> [Per *J*. Leonen, Second Division].

[110] *Id*. at 16.

[111] *See also Lanuza v. BF Corporation*, G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> [Per *J*. Leonen, Second Division].

**ARTICLE III**

**PURPOSE OF NORTHRAIL**

**A. PRIMARY PURPOSE**

**3.1.** To construct, operate and manage a railroad system to serve Northern and Central Luzon; and to develop, construct, manage, own, lease, sublease and operate establishments and facilities of all kinds related to the railroad system[.][112]

Northrail's capitalization and the composition of its subscribers are also subject to the provisions of the original and amended Joint Venture Agreements, and the subsequent Memorandum of Agreement. It was pursuant to the terms of these agreements that Northrail demanded from D.M. Consunji, Inc. the infusion of its share in subscription.

Therefore, Northrail cannot deny understanding that its existence, purpose, rights, and obligations are tied to the agreements. When Northrail demanded for the amount of D.M. Consunji, Inc.'s subscription based on the agreements and later accepted the latter's funds, it proved that it was bound by the agreements' terms. It is also deemed to have accepted the term that such funds shall be used for its privatization. It cannot choose to demand the enforcement of some of its provisions if it is in its favor, and then later by whim, deny being bound by its terms.

Hence, when BCDA and Northrail decided not to proceed with Northrail's privatization and the transfer of subscriptions to D.M. Consunji, Inc., any obligation to return its supposed subscription attached not only to BCDA as party to the agreement but primarily to Northrail as beneficiary that impliedly accepted the terms of the agreement and received D.M. Consunji, Inc.'s funds.

---

[112] *Rollo* (G.R. No. 173170), p. 87.

There is, therefore, merit to DMCI-PDI's argument that if the Civil Code[113] gives third party beneficiaries to a contract the right to demand the contract's fulfillment in its favor, the reverse should also be true.[114] A beneficiary who communicated his or her acceptance to the terms of the agreement before its revocation may be compelled to abide by the terms of an agreement, including the arbitration clause. In this case, Northrail is deemed to have communicated its acceptance of the terms of the agreements when it accepted D.M. Consunji, Inc.'s funds.

Finally, judicial efficiency and economy require a policy to avoid multiplicity of suits. As we said in *Lanuza:*

> Moreover, in *Heirs of Augusto Salas,* this court affirmed its policy against multiplicity of suits and unnecessary delay. This court said that "to split the proceeding into arbitration for some parties and trial for other parties would "result in multiplicity of suits, duplicitous procedure and unnecessary delay." This court also intimated that the interest of justice would be best observed if it adjudicated rights in a single proceeding. While the facts of that case prompted this court to direct the trial court to proceed to determine the issues of that case, it did not prohibit courts from allowing the case to proceed to arbitration, when circumstances warrant.[115]

---

[113] CIVIL CODE, Art. 1311 provides:

> ART. 131 l. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[114] *Rollo* (G.R. No. 173170), pp. 571-574.

[115] *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> pp. 16-17 [Per *J.* Leonen, Second Division], *citing Heirs of Salas, Jr. v. Lapera/ Realty Corporation,* 378 Phil. 369, 376 (1999) [Per *J.* De Leon, Jr., Second Division].

**WHEREFORE,** the petitions are **DENIED.** The February 9, 2006 Regional Trial Court Decision and the June 9, 2006 Regional Trial Court Order are **AFFIRMED.**

**SO ORDERED.**

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

---

**FIRST DIVISION**

[G.R. No. 173140. January 11, 2016]

**MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY [MCIAA],** *petitioner, vs.* **HEIRS OF GAVINA IJORDAN, namely, JULIAN CUISON, FRANCISCA CUISON, DAMASINA CUISON, PASTOR CUISON, ANGELINA CUISON, MANSUETO CUISON, BONIFACIA CUISON, BASILIO CUISON, MOISES CUISON, and FLORENCIO CUISON,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE.—** Both the CA and the RTC found the Deed and the Tax Declaration with which MCIAA would buttress its right to the possession and ownership of the subject lot insufficient to substantiate the right of MCIAA to the relief sought. Considering that possession was a factual matter that the lower courts had thoroughly examined and based their findings on, we cannot undo their findings. We are now instead bound and concluded thereby in accordance with the well-established rule that the findings of fact of the trial court, when affirmed by the CA,

are final and conclusive. Indeed, the Court is not a trier of facts. Moreover, this mode of appeal is limited to issues of law; hence, factual findings should not be reviewed unless there is a showing of an exceptional reason to review them. Alas, that showing is not made.

**2. CIVIL LAW; CIVIL CODE; CONTRACTS; NO PERSON COULD CONTRACT IN THE NAME OF ANOTHER WITHOUT BEING AUTHORIZED BY THE LATTER; EFFECT OF VIOLATION; APPLICATION IN CASE AT BAR.—** The CA and the RTC concluded that the Deed was void as far as the respondents' shares in the subject lot were concerned, but valid as to Julian's share. Their conclusion was based on the absence of the authority from his co-heirs in favor of Julian to convey their shares in the subject lot. We have no reason to overturn the affirmance of the CA on the issue of the respondents' co-ownership with Julian. Hence, the conveyance by Julian of the entire property pursuant to the Deed did not bind the respondents for lack of their consent and authority in his favor. As such, the Deed had no legal effect as to their shares in the property. Article 1317 of the *Civil Code* provides that no person could contract in the name of another without being authorized by the latter, or unless he had by law a right to represent him; the contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, is 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. But the conveyance by Julian through the Deed had full force and effect with respect to his share of 1/22 of the entire property consisting of 546 square meters by virtue of its being a voluntary disposition of property on his part.

**3. ID.; ID.; ESTOPPEL; THE DOCTRINE OF ESTOPPEL APPLIED ONLY TO THOSE WHO WERE PARTIES TO THE CONTRACT AND THEIR PRIVIES OR SUCCESSORS-IN-INTEREST.—** The doctrine of estoppel applied only to those who were parties to the contract and their privies or successors-in-interest. Moreover, the respondents could not be held to ratify the contract that was declared to be null and void with respect to their share, for there was nothing for them to ratify. Verily, the Deed, being null and void, had no

adverse effect on the rights of the respondents in the subject lot.

**4. ID.; ID.; LAND REGISTRATION; UNDER THE TORRENS SYSTEM, NO ADVERSE POSSESSION COULD DEPRIVE THE REGISTERED OWNERS OF THEIR TITLE BY PRESCRIPTION.—** Under the Torrens System, no adverse possession could deprive the registered owners of their title by prescription. The real purpose of the Torrens System is to quiet title to land and to stop any question as to its legality forever. Thus, once title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the *mirador su casa* to avoid the possibility of losing his land.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.

*Silvino G. Maceren, Jr., and Belen Aldecoa Padayhag* for respondents.

**D E C I S I O N**

**BERSAMIN, *J.:***

A sale of jointly owned real property by a co-owner without the express authority of the others is unenforceable against the latter, but valid and enforceable against the seller.

**The Case**

This appeal assails the decision promulgated on February 22, 2006 in CA-G.R. CV No. 61509,[1] whereby the Court of Appeals (CA) affirmed the orders issued by the Regional Trial Court, Branch 53, in Lapu-Lapu City (RTC) on September 2, 1997[2] and March 6, 1998.[3]

---

[1] *Rollo,* pp. 8-18; penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justice Arsenio J. Magpale (retired/deceased) and Associate Justice Vicente L. Yap (retired).

[2] *Id*. at 95-99.

[3] *Id*. al 112-113.

## Antecedents

On October 14, 1957, Julian Cuizon (Julian) executed a Deed of Extrajudicial Settlement and Sale[4] (Deed) covering Lot No. 4539 (subject lot) situated in Ibo, Municipality of Opon (now Lapu-Lapu City) in favor of the Civil Aeronautics Administration (CAA), the predecessor-in-interest of petitioner Manila Cebu International Airport Authority (MCIAA). Since then until the present, MCIAA remained in material, continuous, uninterrupted and adverse possession of the subject lot through the CAA, later renamed the Bureau of Air Transportation (BAT), and is presently known as the Air Transportation Office (ATO). The subject lot was transferred and conveyed to MCIAA by virtue of Republic Act No. 6958.

In 1980, the respondents caused the judicial reconstitution of the original certificate of title covering the subject lot (issued by virtue of Decree No. 531167). Consequently, Original Certificate of Title (OCT) No. R0-2431 of the Register of Deeds of Cebu was reconstituted for Lot No. 4539 in the names of the respondents predecessors-in-interest, namely, Gavina Ijordan, and Julian, Francisca, Damasina, Marciana, Pastor, Angela, Mansueto, Bonifacia, Basilio, Moises and Florencio, all surnamed Cuison.[5] The respondents' ownership of the subject lot was evidenced by OCT No. R0-2431. They asserted that they had not sold their shares in the subject lot, and had not authorized Julian to sell their shares to MCIAA' s predecessor- in-interest.[6]

The failure of the respondents to surrender the owner's copy of OCT No. R0-2431 prompted MCIAA to sue them for the cancellation of title in the RTC,[7] alleging in its complaint that the certificate of title conferred no right in favor of the respondents because the lot had already been sold to the Government in 1957; that the subject lot had then been declared for taxation purposes

---

[4] *Id*. at 59-61. 9-10.

[5] *Id*. at 63-64.

[6] *Id*. at 95-96.

[7] *Id*. at 65-70.

under Tax Declaration No. 00387 in the name of the BAT; and that by virtue of the Deed, the respondents came under the legal obligation to surrender the certificate of title for cancellation to enable the issuance of a new one in its name.

At the trial, MCIAA presented Romeo Cueva, its legal assistant, as its sole witness who testified that the documents pertaining to the subject lot were the Extrajudicial Settlement and Sale and Tax Declaration No. 00387 in the name of the BAT; and that the subject lot was utilized as part of the expansion of the Mactan Export Processing Zone Authority I.[8]

After MCIAA's presentation of evidence, the respondents moved to dismiss the complaint upon the Demurrer to Evidence dated February 3, 1997,[9] contending that the Deed and Tax Declaration No. 00387 had no probative value to support MCIAA's cause of action and its prayer for relief. They cited Section 3, Rule 130 of the *Rules of Court* which provided that "when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself." They argued that what MCIAA submitted was a mere photocopy of the Deed; that even assuming that the Deed was a true reproduction of the original, the sale was unenforceable against them because it was only Julian who had executed the same without obtaining their consent or authority as his co-heirs; that Article 1317 of the *Civil Code* provided 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;" and that the tax declaration had no probative value by virtue of its having been derived from the unenforceable sale.

MCIAA opposed the Demurrer to Evidence in due course.[10]

In its order dated September 2, 1997,[11] the RTC dismissed MCIAA's complaint insofar as it pertained to the shares of the

---

[8] *Id*. at 96.

[9] *Id*. at 89-92.

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

[11] *Id*. at 95-99.

respondents in Lot No. 4539 but recognized the sale as to the 1/22 share of Julian, disposing as follows:

> Wherefore, in the light of the foregoing considerations, defendants' demurrer to evidence is granted with qualification. Consequently, plaintiff's complaint is hereby dismissed insofar as it pertains to defendants' shares of Lot No. 4539, as reflected in Original Certificate of Title No. RO 2431. Plaintiff however, is hereby declared the owner of 1/22 share of Lot No. 4539. In this connection, the Register of Deeds of Lapu-Lapu City is hereby directed to effect the necessary change in OCT No. R0-2431 by replacing as one of the registered owners, **"Julian Cuizon**, married to **Marcosa Cosef**", with the name of plaintiff. No pronouncement as to costs.
>
> SO ORDERED.[12]

The RTC observed that although it appeared from the Deed that vendor Julian was the only heir of the late Pedro Cuizon, thereby adjudicating unto himself the whole of Lot No. 4539, it likewise appeared from the same Deed that the subject lot was covered by Cadastral Case No. 20, and that Decree No. 531167 had been issued on July 29, 1930; that having known that the subject lot had been covered by the decree issued long before the sale took place, the more appropriate thing that MCIAA or its representatives should have done was to check the decreed owners of the lot, instead of merely relying on the tax declaration issued in the name of Pedro Cuizon and on the statement of Julian; that the supposedly uninterrupted possession by MCIAA and its predecessors-in-interest was not sufficiently established, there being no showing of the improvements introduced on the property; and that even assuming that MCIAA had held the material possession of the subject lot, the respondents had remained the registered owners of Lot No. 4539 and could not be prejudiced by prescription.

MCIAA moved for reconsideration,[13] but the RTC denied its motion on March 6, 1998.[14]

---

[12] *Id*. at 99.

[13] *Id*. at 100-111.

[14] *Id*. at 112-113.

MCIAA appealed to the CA, submitting that:[15]

I. THE TRIAL COURT ERRED IN RULING THAT ONLY THE SHARE OF JULIAN CUIZON WAS SOLD TO PLAINTIFF-APPELLANT WAY BACK IN 1957.

II. THE TRIAL COURT ERRED IN DISREGARDING THE UN-EXPLAINED, UNREASONABLE AND TEDIOUS INACTION OF DEFENDANT-APPELLEES WHICH CONSTITUTE THEIR IMPLIED RATIFICATION OF THE SALE WHICH THEY CANNOT NOW CONVENIENTLY IMPUGN IN ORDER TO TAKE ADVANTAGE OF THE PHENOMENAL RISE IN LAND VALUES IN MACTAN ISLAND.

III. THE TRIAL COURT ERRED IN RULING THAT PLAINTIFF-APPELLANT HAS NOT PROVEN POSSESSION OVER SAID LOT.

IV. THE TRIAL COURT ERRED IN NOT CONSIDERING MOTO-PROPRIO DEFENDANTS-APPELLEES AS GUILTY OF LACHES AND/OR ESTOPPEL IN THE FACE OF CLEAR EVIDENCE FROM THE VERY FACTS OF THE CASE ITSELF; IT SHOULD BE NOTED, MOREVER THAT IT WAS PLAINTIFF -APPELLANT WHO INITIATED THE COMPLAINT HENCE THE SAME COULD NOT PROPERLY BE RAISED AS DEFENSES HEREIN BY PLAINTIFF- APPELLANT.

V. THE TRIAL COURT ERRED IN DISREGARDING THE VALID PROVISION OF THE EXTRAJUDICIAL SETTLEMENT AND SALE THAT DEFENDANTS-APPELLEES MERELY HOLD THE TITLE IN TRUST FOR PLAINTIFF-APPELLANT AND ARE THEREFORE OBLIGATED TO SURRENDER THE SAME TO PLAINTIFF-APPELLANT SO THE TITLE COULD BE TRANSFERRED TO IT AS THE VENDEE WAY BACK IN 1957.

In the assailed decision promulgated on February 22, 2006,[16] the CA affirmed the orders of the RTC issued on September 2, 1997[17] and March 6, 1998.[18]

---

[15] *Id*. at 152-153.

[16] *Supra* note 1.

[17] *Supra* note 2.

[18] *Supra* note 3.

The CA subsequently denied MCIAA's motion for reconsideration[19] on June 15, 2006.[20]

**Issues**

In this appeal, MCIAA submits the following grounds:[21]

THE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THE FOLLOWING:

I. RESPONDENTS WERE FULLY AWARE OF THE SALE OF THE SUBJECT LOT IN 1957 AND PETITIONER'S CONTINUOUS POSSESSION THEREOF.

II. RESPONDENTS' INACTION FOR MORE THAN THIRTY (30) YEARS TO RECOVER POSSESSION OF THE LOT AMOUNTS TO AN IMPLIED RATIFICATION OF THE SALE.

III. PETITIONER'S POSSESSION OF THE LOT SINCE 1957 IS BORNE BY THE CASE RECORD.

IV. RESPONDENTS ARE CLEARLY GUILTY OF ESTOPPEL BY LACHES, WHICH LEGALLY BARS THEM FROM RECOVERING POSSESSION OF THE LOT.

In other words, was the subject lot validly conveyed in its entirety to the petitioner?

In support of its appeal, MCIAA insists that the respondents were fully aware of the transaction with Julian from the time of the consummation of the sale in 1957, as well as of its continuous possession thereof;[22] that what was conveyed by Julian to its predecessor-in-interest, the CAA, was the entirety of Lot No. 4539, consisting of 12,012 square meters, not just his share of l/22 of the whole lot; that the respondents were guilty of inexplicable inaction as to the sale, which manifested their implied ratification of the supposedly unauthorized act

---

[19] *ld*. at 166-175.

[20] *ld*. at 19-20.

[21] *ld*. at 29-30.

[22] *Id*. at 30.

of Julian of selling the subject lot in 1957; that although the respondents were still minors at the time of the execution of the sale, their ratification of Julian's act became evident from the fact that they had not impugned the sale upon reaching the age of majority; that they asserted their claim only after knowing of the phenomenal rise in the value of the lot in the area despite their silence for more than 30 years; and that they did not assert ownership for a long period, and did not exercise physical and constructive possession by paying the taxes or declaring the property for taxation purposes.

On their part, the respondents aver that they were not aware of the sale of the subject lot in 1957 because the sale was not registered, and because the subject lot was not occupied by MCIAA or its lessee;[23] that they became aware of the claim of MCIAA only when its representative tried to intervene during the reconstitution of the certificate of title in 1980; and that one of the co-owners of the property, Moises Cuison, had been vigilant in preventing the occupation of the subject lot by other persons.

**Ruling of the Court**

The appeal has no merit.

Firstly, both the CA and the RTC found the Deed and the Tax Declaration with which MCIAA would buttress its right to the possession and ownership of the subject lot insufficient to substantiate the right of MCIAA to the relief sought. Considering that possession was a factual matter that the lower courts had thoroughly examined and based their findings on, we cannot undo their findings. We are now instead bound and concluded thereby in accordance with the well-established rule that the findings of fact of the trial court, when affirmed by the CA, are final and conclusive. Indeed, the Court is not a trier of facts. Moreover, this mode of appeal is limited to issues of law; hence, factual findings should not be reviewed unless there is a showing of an exceptional reason to review them. Alas, that showing is not made.

---

[23] *Id*. at 192.

Secondly, the CA and the RTC concluded that the Deed was void as far as the respondents' shares in the subject lot were concerned, but valid as to Julian's share. Their conclusion was based on the absence of the authority from his co-heirs in favor of Julian to convey their shares in the subject lot. We have no reason to overturn the affirmance of the CA on the issue of the respondents' co-ownership with Julian. Hence, the conveyance by Julian of the entire property pursuant to the Deed did not bind the respondents for lack of their consent and authority in his favor. As such, the Deed had no legal effect as to their shares in the property. Article 1317 of the *Civil Code* provides that no person could contract in the name of another without being authorized by the latter, or unless he had by law a right to represent him; the contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, is 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. But the conveyance by Julian through the Deed had full force and effect with respect to his share of 1/22 of the entire property consisting of 546 square meters by virtue of its being a voluntary disposition of property on his part. As ruled in *Torres v. Lapinid:*[24]

> x x x even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. This is because the sale or other disposition of a co-owner affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common.

MCIAA's assertion of estoppel or ratification to bar the respondents' contrary claim of ownership of their shares in the subject lot is bereft of substance. The doctrine of estoppel applied only to those who were parties to the contract and their privies or successors-in-interest.[25] Moreover, the respondents could not

---

[24] G.R. No. 187987, November 26, 2014.

[25] Article 1439, *Civil Code.*

be held to ratify the contract that was declared to be null and void with respect to their share, for there was nothing for them to ratify. Verily, the Deed, being null and void, had no adverse effect on the rights of the respondents in the subject lot.

Lastly, MCIAA's contention on acquisitive prescription in its favor must fail. Aside from the absence of the satisfactory showing of MClAA's supposed possession of the subject lot, no acquisitive prescription could arise in view of the indefeasibility of the respondents' Torrens title. Under the Torrens System, no adverse possession could deprive the registered owners of their title by prescription.[26] The real purpose of the Torrens System is to quiet title to land and to stop any question as to its legality forever. Thus, once title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the *mirador su casa* to avoid the possibility of losing his land.[27]

**WHEREFORE,** the Court **DENIES** the petition for review on *certiorari;* and **AFFIRMS** the decision promulgated on February 22, 2006.

No pronouncement on costs of suit.

**SO ORDERED.**

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

---

[26] *Bishop v. Court of Appeals,* G.R. No. 86787, May 8, 1992, 208 SCRA 636, 641.

[27] *Francisco v. Rojas,* G.R. No. 167120, April 23, 2014, 723 SCRA 423, 450-451.

**SECOND DIVISION**

[G.R. No. 174673. January 11, 2016]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **FE ROA GIMENEZ AND IGNACIO B. GIMENEZ,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; LAW ON PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 1379 (AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE OF ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR); CIVIL FORFEITURE PROCEEDINGS; SANDIGANBAYAN'S JURISDICTION OVER CIVIL FORFEITURE CASES, WHICH REQUIRES PREPONDERANCE OF EVIDENCE; SUSTAINED.—** Actions for reconveyance, revision, accounting, restitution, and damages for ill-gotten wealth are also called civil forfeiture proceedings. Republic Act No. 1379 provides for the procedure by which forfeiture proceedings may be instituted against public officers or employees who "[have] acquired during his [or her] incumbency an amount of property which is manifestly out of proportion to his [or her] salary as such public officer or employee and to his [or her] other lawful income and the income from legitimately acquired property, [which] property shall be presumed prima facie to have been unlawfully acquired." This court has already settled the Sandiganbayan's jurisdiction over civil forfeiture cases: . . . violations of R.A. No. 1379 are placed under the jurisdiction of the Sandiganbayan, even though the proceeding is civil in nature, since the forfeiture of the illegally acquired property amounts to a penalty. In *Garcia v. Sandiganbayan, et al.*, this court re-affirmed the doctrine that forfeiture proceedings under Republic Act No. 1379 are civil in nature. Civil forfeiture proceedings were also differentiated from plunder cases: . . . a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case. . . . In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance

of the acquisition of ill-gotten wealth. . . . On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. x x x To stress, the quantum of evidence required for forfeiture proceedings under Republic Act No. 1379 is the same with other civil cases — preponderance of evidence.

**2. REMEDIAL LAW; EVIDENCE; FORMAL OFFER OF EVIDENCE; THE RULES SPECIFICALLY PROVIDES THAT EVIDENCE MUST BE FORMALLY OFFERED TO BE CONSIDERED BY THE COURT; RATIONALE.—** Our Rules of Court lays down the procedure for the formal offer of evidence. Testimonial evidence is offered "at the time [a] witness is called to testify." Documentary and object evidence, on the other hand, are offered "after the presentation of a party's testimonial evidence." Offer of documentary or object evidence is generally done orally unless permission is given by the trial court for a written offer of evidence. More importantly, the Rules specifically provides that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case. "Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it." x x x The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case. Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it." x x x To consider a party's evidence which was not formally offered during trial would deprive the other party of due process. Evidence not formally offered has no probative value and must be excluded by the court.

**3. ID.; ID.; ID.; WHEN THE COURT MAY RELAX THE RULE ON THE FORMAL OFFER OF EVIDENCE; APPLICATION IN CASE AT BAR.—** This court has long acknowledged the policy of the government to recover the assets and properties illegally acquired or misappropriated by former

President Ferdinand E. Marcos, his wife Mrs. Imelda R. Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees. Hence, this court has adopted a liberal approach regarding technical rules of procedure in cases involving recovery of ill-gotten wealth: x x x To be clear, petitioner was able to file its Formal Offer of Evidence, albeit, belatedly. Petitioner hurdled 19 years of trial before the Sandiganbayan to present its evidence as shown in its extensive Formal Offer of Evidence. x x x This court is not unmindful of the difficulty in gathering voluminous documentary evidence in cases of forfeiture of ill-gotten wealth acquired throughout the years. It is never easy to prosecute corruption and take back what rightfully belongs to the government and the people of the Republic. This is not the first time that this court relaxed the rule on formal offer of evidence. x x x Furthermore, "subsequent and substantial compliance . . . may call for the relaxation of the rules of procedure." Weighing the amount of time spent in litigating the case against the number of delays petitioner incurred in submitting its Formal Offer of Evidence and the state's policy on recovering ill-gotten wealth, this court is of the belief that it is but only just that the Rules be relaxed and petitioner be allowed to submit its written Formal Offer of Evidence.

4. **ID.; ID.; BEST EVIDENCE RULE; THE ORIGINAL DOCUMENT MUST BE PRESENTED WHEN THE SUBJECT OF THE INQUIRY IS THE CONTENTS OF THE DOCUMENT; EXCEPTIONS.—** Save for certain cases, the original document must be presented during trial when the subject of the inquiry is the contents of the document. This is the Best Evidence Rule provided under Rule 130, Section 3 of the Rules of Court: x x x In case of unavailability of the original document, secondary evidence may be presented as provided for under Sections 5 to 7 of the same Rule.

5. **ID.; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; AN ORDER GRANTING DEMURRER TO EVIDENCE IS A JUDGMENT ON THE MERITS; EXPLAINED.—** A liberal application of the Rules is in line with the state's policy to recover ill-gotten wealth. In case of doubt, courts should proceed with caution in granting a motion to dismiss based on demurrer to evidence. An order granting demurrer to evidence is a judgment on the merits. This is because while a demurrer "is an aid or

instrument for the expeditious termination of an action," it specifically "pertains to the merits of the case." x x x To reiterate, "[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought." The order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits: x x x To erroneously grant a dismissal simply based on the delay to formally offer documentary evidence essentially deprives one party of due process.

**6. ID.; ID.; PLEADINGS; SPECIFIC DENIAL, DEFINED; THREE MODES OF SPECIFIC DENIAL, ENUMERATED.—** Under Rule 8, Section 10 of the Rules of Court, the "defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." There are three modes of specific denial provided for under the Rules: 1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.

**7. ID.; ID.; ID.; ID.; USING "SPECIFICALLY" IN A GENERAL DENIAL DOES NOT AUTOMATICALLY CONVERT THAT GENERAL DENIAL TO A SPECIFIC ONE; ELUCIDATED.—** In *Aquintey v. Spouses Tibong*, this court held that using "specifically" in a general denial does not automatically convert that general denial to a specific one. The denial in the answer must be so definite as to what is admitted and what is denied: x x x However, the allegations in the pleadings "must be contextualized and interpreted in relation to the rest of the statements in the pleading." The denials in respondents' Answer comply with the modes provided for under the Rules. We have held that the purpose of requiring specific denials from the defendant is to make the defendant disclose the "matters alleged in the complaint which he [or she] succinctly

intends to disprove at the trial, together with the matter which he [or she] relied upon to support the denial." The denials proffered by respondents sufficiently disclosed the matters they wished to disprove and those they would rely upon in making their denials.

**8. ID.; ID.; DEMURRER TO EVIDENCE; IF THE MOTION TO DISMISS IS GRANTED BUT ON APPEAL THE ORDER OF DISMISSAL IS REVERSED, THE MOVANT SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT EVIDENCE; NOT APPLICABLE IN CASE AT BAR.—** The third part of Rule 33, Section 1 of the Rules of Court provides that "[i]f the motion [to dismiss] is granted but on appeal the order of dismissal is reversed [the movant] shall be deemed to have waived the right to present evidence." x x x In this case, we principally nullify the assailed Resolutions that denied the admission of the Formal Offer of Evidence. It only follows that the Order granting demurrer should be denied. This is not the situation contemplated in Rule 33, Section 1. Respondents were not able to even comment on the Formal Offer of Evidence. Due process now requires that we remand the case to the Sandiganbayan. Respondents may, at their option and through proper motion, submit their Comment. The Sandiganbayan should then rule on the admissibility of the documentary and object evidence covered by the Formal Offer submitted by petitioner. Respondents then may avail themselves of any remedy thereafter allowed by the Rules.

## APPEARANCES OF COUNSEL

*The Solicitor General* for petitioner.

*Ramon U. Ampil, Bodegon Estorninos Guerzon Borje & Gozos and Ernesto S. Ang, Jr.,* for respondents.

## D E C I S I O N

**LEONEN, *J.*:**

Rules of procedure are not ends in themselves. The object of these rules is to assist and facilitate a trial court's function to be able to receive all the evidence of the parties, and evaluate

their admissibility and probative value in the context of the issues presented by the parties' pleadings in order to arrive at a conclusion as to the facts that transpired. Having been able to establish the facts, the trial court will then be able to apply the law and determine whether a complainant is deserving of the reliefs prayed for in the pleading.

Dismissal on the basis of a very strict interpretation of procedural rules without a clear demonstration of the injury to a substantive right of the defendant weighed against 19 years of litigation actively participated in by both parties should not be encouraged.

There is likewise serious reversible error, even grave abuse of discretion, when the Sandiganbayan dismisses a case on demurrer to evidence without a full statement of its evaluation of the evidence presented and offered and the interpretation of the relevant law. After all, dismissal on the basis of demurrer to evidence is similar to a judgment. It is a final order ruling on the merits of a case.

This is a Petition[1] for Review on Certiorari assailing the Sandiganbayan Resolutions dated May 25, 2006[2] and September 13, 2006.[3] The Sandiganbayan deemed petitioner Republic of the Philippines (Republic) to have waived the filing of its Formal Offer of Evidence[4] and granted the Motion to Dismiss of respondents Spouses Ignacio Gimenez and Fe Roa Gimenez (Gimenez Spouses) based on demurrer to evidence.[5]

---

[1] *Rollo*, pp. 30-120.

[2] *Id*. at 122. The case was docketed as Civil Case No. 0007 and entitled *Republic v. Fe Roa Gimenez and Ignacio B. Gimenez*. The Resolution was approved by Associate Justices Gregory S. Ong (Chair), Jose R. Hernandez, and Rodolfo A. Ponferrada of the Fourth Division.

[3] *Id*. at 124-133. The Resolution was penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong (Chair) and Rodolfo A. Ponferrada.

[4] *Id*. at 122, Resolution dated May 25, 2006.

[5] *Id*. at 133, Resolution dated September 13, 2006.

The Republic, through the Presidential Commission on Good Government (PCGG), instituted a Complaint[6] for Reconveyance, Reversion, Accounting, Restitution and Damages against the Gimenez Spouses before the Sandiganbayan.[7] "The Complaint seeks to recover . . . ill-gotten wealth . . . acquired by [the Gimenez Spouses] as dummies, agents[,] or nominees of former President Ferdinand E. Marcos and Imelda Marcos[.]"[8]

During trial, the Republic presented documentary evidence attesting to the positions held, business interests, income, and pertinent transactions of the Gimenez Spouses.[9] The Republic presented the testimonies of Atty. Tereso Javier, Head of the Sequestered Assets Department of PCGG, and of Danilo R.V. Daniel, Director of the Research and Development Department of PCGG.[10] Witnesses testified on the bank accounts and businesses owned or controlled by the Gimenez Spouses.[11]

On February 27, 2006, the Sandiganbayan denied a motion to recall Danilo R.V. Daniel's testimony.[12] The Republic then manifested that it was "no longer presenting further evidence."[13] Accordingly, the Sandiganbayan gave the Republic 30 days or until March 29, 2006 "to file its formal offer of evidence."[14]

On March 29, 2006, the Republic moved "for an extension of thirty (30) days or until April 28, 2006, within which to file [its] formal offer of evidence."[15] This Motion was granted by the Sandiganbayan in a Resolution of the same date.[16]

---

[6] *Id*. at 134-161.

[7] *Id*. at 1721, Republic's Memorandum.

[8] *Id*. at 1722.

[9] *Id*. at 1725-1726.

[10] *Id*. at 1726.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

On April 27, 2006, the Republic moved for an additional 15 days or until May 13, 2006 within which to file its Formal Offer of Evidence.[17] This Motion was granted by the Sandiganbayan in a Resolution dated May 8, 2006.[18] Following this, no additional Motion for extension was filed by the Republic.

In the **first assailed Resolution** dated May 25, 2006, the Sandiganbayan noted that the Republic failed to file its Formal Offer of Evidence notwithstanding repeated extensions and the lapse of 75 days from the date it terminated its presentation of evidence.[19] Thus, it declared that the Republic waived the filing of its Formal Offer of Evidence.[20]

The first assailed Resolution provides:

> It appearing that the plaintiff has long terminated the presentation of its evidence on February 27, 2006, and it appearing further that it failed or otherwise neglected to file its written formal offer of evidence for an unreasonable period of time consisting of 75 days (i.e., 30 days original period plus two extension periods totaling 45 days), the filing of said written formal offer of evidence is hereby deemed WAIVED.
>
> WHEREFORE, the reception of the defendants' evidence shall proceed on June 22 and 23, 2006, both at 8:30 o'clock [sic] in the morning as previously scheduled.[21]

Ignacio Gimenez filed a Motion to Dismiss on Demurrer to Evidence dated May 30, 2006.[22] He argued that the Republic showed no right to relief as there was no evidence to support its cause of action.[23] Fe Roa Gimenez filed a Motion to Dismiss

---

[17] *Id*. at 1727.

[18] *Id*.

[19] *Id*. at 122, Resolution dated May 25, 2006.

[20] *Id*.

[21] *Id*.

[22] *Id*. at 124, Resolution dated September 13, 2006.

[23] *Id*. at 126.

dated June 13, 2006 on the ground of failure to prosecute.[24] Through her own Motion to Dismiss, she joined Ignacio Gimenez's demurrer to evidence.[25]

Two days after Fe Roa Gimenez's filing of the Motion to Dismiss or on June 15, 2006, the Republic filed a Motion for Reconsideration [of the first assailed Resolution] and to Admit Attached Formal Offer of Evidence.[26] The pertinent portions of the Republic's offer of documentary exhibits attached to the Motion are summarized as follows:

**Exhibits A to G** and series consist of the Income Tax Returns, Certificate of Income Tax Withheld On Compensation, Statement of Tax Withheld At Source, Schedule of Interest Income, Royalties and Withholding Tax, Statement of Assets, Liabilities & Net Worth of Ignacio B. Gimenez from 1980-1986 proving his legitimate income during said period. **Exhibits H -J** and series refer to the Deeds of Sale and Transfer Certificates of Title proving that spouses Gimenezes acquired several real properties.

**Exhibits K and series (K-1-K-4)** pertain to Checking Statements Summary issued by the Bankers Trust Company (BTC) proving that Fe Roa Gimenez maintained a current account under Account Number 34-714-415 with BTC. **Exhibits L and series (L1-L-114)** are several BTC checks, proving that from June 1982 to April 1984, Fe Roa Gimenez issued several checks against her BTC Current Account No. 34-714-415 payable to some individuals and entities such as Erlinda Oledan, Vilma Bautista, The Waldorf Towers, Cartier, Gliceria Tantoco, Bulgari, Hammer Galleries and Renato Balestra, involving substantial amount of money in US Dollars. **Exhibits M and series (M1-M-25)** are several The Chase Manhattan Bank (TCMB) checks drawn against the account of Fe Roa Gimenez under Account Number 021000021, proving that she issued several checks drawn against her TCMB account, payable to individuals and entities such as Gliceria Tantoco, Vilma Bautista and The Waldorf Towers, involving substantial sums in US Dollars. **Exhibit N** is the Philippine National Bank (PNB), New York Branch Office Charge Ticket No.

---

[24] *Id*. at 124-125.

[25] *Id*. at 1767, Republic's Memorandum.

[26] *Id*. at 188-191.

FT 56880 dated December 9, 1982 in the amount of US$30,000.00 for Fe Roa Gimenez proving that she received said enormous amount from the PNB, New York Branch Office, with clearance from the Central Bank, which amount was charged against PNB Manila. **Exhibit N-1** is the PNB New York Branch Advice to Payee No. FT 56535 dated November 12, 1982 in the amount of US$10,990.00 for Fe Roa Gimenez proving her receipt of such amount as remitted from California Overseas Bank, Los Angeles. **Exhibits O and series (O1-O-8)** refer to several Advices made by Bankers Trust AG Zurich-Geneve Bank in Switzerland to respondent Fe Roa Gimenez proving that she maintained a current account with said bank under Account Number 107094.50 and that from July 30, 1984 to August 30, 1984, she placed a substantial amount on time deposit in several banks, namely, Hypobank, Luzemburg, Luxemburg, Societe Generale, Paris and Bank of Nova Scotia, London.

**Exhibit P** is the Certification dated March 19, 2002 issued by Director Florino O. Ibanez of the Office of the President proving that Fe Roa Gimenez, from January 1, 1966 to April 1, 1986, worked with the Office of the President under different positions, the last of which as Presidential Staff Director with a salary of ₱87,072.00 per annum.

**Exhibit Q and series (Q-1-Q-18)** is the Affirmation of Ralph Shapiro filed with the United States Court of Appeals in the case entitled, "The Republic of the Philippines vs. Ferdinand E. Marcos, et al." which discussed certain acts of Fe Roa Gimenez and Vilma Bautista, among others, in relation to the funds of the Marcoses.

**Exhibits R and S and series (R-1, R-9; S-1-S-10)** refer to the Certificate of Filing of Amended Articles of Incorporation of GEI Guaranteed Education, Inc., the Amended Articles of Incorporation of GEl Guaranteed Education, Inc., the Treasurer's Affidavit executed by Ignacio Gimenez and the Director's Certificate executed by Roberto B. Olanday, Ignacio Gimenez and Roberto Coyuto, Jr. proving Ignacio Gimenez and Roberto Olanday's interests in GEl Guaranteed Education, Inc.

**Exhibits T and series (T-1-T-8)** are the Advices made by the Bankers Trust AG Zurich-Geneve Bank in Switzerland to Ignacio Gimenez proving that he maintained a current account with said bank under Account Number 101045.50 and that from March to June, 1984, he placed a substantial amount on time deposit in several

banks, namely, Credit Lyonnais, Brussels, Societe Generale, Paris, Credit Commercial De France, Paris and Bank of Nova Scotia, London.

**Exhibits U and V and series (U-1-U-5; V1-V-18)** consist of the Affidavit dated April 25, 1986 and the Declaration dated June 23, 1987 including the attachments, of Oscar Carino, Vice-President and Manager of the PNB New York Branch, narrating in detail how the funds of the PNB New York Branch were disbursed outside regular banking business upon the instructions of former President Ferdinand E. Marcos and Imelda Marcos using Fe Roa Gimenez and others as conduit.

**Exhibits W and series (W-1-W-4)** are the Debit memos from the PNB to Fe Roa Gimenez while **Exhibits X and X-1** are the Acknowledgments of said respondent, proving that she received substantial amounts of money which were coursed through the PNB to be used by the Marcos spouses for state visits and foreign trips.

**Exhibit Y and series (Y-1-Y-2)** is the Letter dated August 25, 1986 of Juan C. Gatmaitan, Assistant Chief Legal Counsel of PNB to Charles G. LaBella, Assistant United States Attorney regarding the on-going investigation of irregular transactions at the PNB, New York Branch proving that PNB cooperated with the United States government in connection with the investigation on the irregular transactions of Oscar Carino at PNB New York Branch.

**Exhibit Z** is the service record of Fe Roa Gimenez issued by Florino O. Ibanez of the Office of the President which proves that she worked with the Office of the President from 1966-1986 holding different positions, the last of which was Presidential Staff Director.

**Exhibits AA and series (AA-1 –AA-2)** are the several Traders Royal Bank checks drawn against Account No. 74-702836-9 under the account name of Fe Roa Gimenez which prove that she issued said checks payable to individuals and entities involving substantial amount of money.

**Exhibits BB and CC and series (BB-1–BB-17; CC-1-CC-3)** are the several Transfer of Funds Advice from Traders Royal Bank Statements of Account of Fe Roa Gimenez, proving that she maintained a current account under Account No. 74-7028369 at Traders Royal Bank.

**Exhibits HH and series (HH-1-HH-3)** are the Certification dated October 3, 2002 of Lamberto R. Barbin, Officer-in-Charge,

Malacanang Records Office, that the Statement of Assets and Liabilities of spouses Marcoses for the years 1965 up to 1986 are not among the records on file in said Office except 1965, 1967 and 1969; the Statement of Assets and Liabilities as of December 31, 1969 and December 31, 1967 of former President Ferdinand Marcos; and the Sworn Statement of Financial Condition, Assets, Income and Liabilities as of December 31, 1965 of former President Ferdinand Marcos. These documentary exhibits prove the assets and liabilities of former President Marcos for the years 1965,1967 and 1969.

**Exhibit II and series** is [sic] the Statement of Assets and Liabilities as of December 31,1969 submitted by Fe Roa Gimenez which prove that her assets on that period amounted only to ₱39,500.00.

**Exhibit KK** is the Table of Contents of Civil Case No. [0]007 before the Sandiganbayan entitled "Republic of the Philippines vs. Ignacio B. Gimenez and Fe Roa Gimenez, et al.", including its Annexes which prove the assets and liabilities of spouses Gimenezes.

**Exhibits KK-1 up to KK-12** are several transfer certificates of title and tax declarations in the names of spouses Gimenezes, proving their acquisition of several real properties.

**Exhibits KK-15, KK-18, KK-20 up to KK-27, KK-30, KK-32 up to KK-38 and KK-40** are the General Information Sheet, Certificate of Filing of Amended Articles of Incorporation, and Amended Articles of Incorporation of various corporations. These prove the corporations in which Ignacio B. Gimenez has substantial interests.

**Exhibits KK-41 up to KK-44** are the Writs and Letters of Sequestration issued by the PCGG which prove that the shares of stocks of Ignacio Gimenez in Ignacio B. Gimenez, Securities, Inc. and the real properties covered by Transfer Certificates of Title Nos. 137638, 132807, 126693 and 126694 located in San Fabian, Pangasinan, were sequestered by the PCGG.

**Exhibit KK-45** is the Memorandum dated August 1, 1988 of Atty. Ralph S. Lee and Alexander M. Berces, Team Supervisor and Investiogator, [sic] respectively, of IRD, PCGG, proving that the PCGG conducted an investigation on New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio B. Gimenez and Roberto O. Olanday.

**Exhibits KK-48, KK-49 and KK-50** are certain Lis Pendens from the PCGG addressed to the concerned Register of Deeds informing that the real properties mentioned therein had been sequestered and are the subject of Civil Case No. [0]007 before the Sandiganbayan.

**Exhibits KK-51, KK-51-A, KK-52 and KK-52-A** are the Letter and Writ of Sequestration issued by the PCGG on Allied Banking Corporation and Guaranteed Education Inc. pursuant to its mandate to go after ill-gotten wealth.

**Exhibits NN, OO, PP, QQ and QQ-1** refer to the Memorandum To All Commercial Banks dated March 14, 1986 issued by then Central Bank Governor Jose B. Fernandez and the Letter dated March 13, 1986 of Mary Concepcion Bautista, PCGG Commissioner addressed to then Central Bank Governor Fernandez requesting that names be added to the earlier request of PCGG Chairman Jovito Salonga to instruct all commercial banks not to allow any withdrawal or transfer of funds from the market placements under the names of said persons, to include spouses Gimenezes, without authority from PCGG.

**Exhibits KK and series, NN, OO, PP, QQ and QQ-1** which prove the various real properties, business interests and bank accounts owned by spouses Gimenezes were part of the testimony of Atty. Tereso Javier.

**Exhibit RR and series (RR-1-RR-23)** are the Affidavit dated July 24, 1987 of Dominador Pangilinan, Acting President and President of Trader's Royal Bank, and the attached Recapitulation, Status of Banker's Acceptances, Status of Funds and Savings Account Ledger wherein he mentioned that Malacanang maintained trust accounts at Trader's Royal Bank, the balance of which is approximately 150-175 million Pesos, and that he was informed by Mr. Rivera that the funds were given to him (Rivera) by Fe Roa Gimenez for deposit to said accounts.

**Exhibits SS and series (SS-1-SS-29)** are the Affidavit dated July 23, 1987 of Apolinario K. Medina, Executive Vice President of Traders Royal Bank and attachments, which include Recapitulation, Status of Funds, and Messages from Traders Royal Bank Manila to various foreign banks. In his Affidavit, Medina divulged certain numbered confidential trust accounts maintained by Malacanang with the Trader's Royal Bank. He further stated that the deposits were so substantial

that he suspected that they had been made by President Marcos or his family.

**Exhibit TT and series (TT-1-TT-3)** is [sic] the Memorandum dated July 19, 2005 of Danilo R.V. Daniel, then Director of the Research and Development Department of PCGG regarding the investigation conducted on the ill-gotten wealth of spouses Gimenezes, the subject matter of Civil Case No. [0]007. He revealed that during the investigation on the ill-gotten wealth of spouses Gimenezes, it was found out that from 1977 to 1982, several withdrawals, in the total amount of ₱75,090,306.42 were made from Trust Account No. 128 (A/C 76-128) in favor of I.B. Gimenez, I.B. Gimenez Securities and Fe Roa Gimenez.

**Exhibits RR, SS, TT** and their series prove that spouses Gimenez maintained bank accounts of substantial amounts and gained control of various corporations. These are also being offered as part of the testimony of Danilo R.V. Daniel.[27] (Emphasis in the original, citations omitted)

In the **second assailed Resolution** dated September 13, 2006, the Sandiganbayan denied the Republic's Motion for Reconsideration and granted the Gimenez Spouses' Motion to Dismiss.[28] According to the Sandiganbayan:

While it is true that litigation is not a game of technicalities and that the higher ends of substantial justice militate against dismissal of cases purely on technical grounds, the circumstances of this case show that the ends of justice will not be served if this Court allows the wanton disregard of the Rules of Court and of the Court's orders. Rules of procedure are designed for the proper and prompt disposition of cases. . . .

The reasons invoked by the plaintiff to justify its failure to timely file the formal offer of evidence fail to persuade this Court. The missing exhibits mentioned by the plaintiff's counsel appear to be the same missing documents since 2004, or almost two (2) years ago. The plaintiff had more than ample time to locate them for its purpose. . . . Since they remain missing after lapse of the period

---

[27] *Id*. at 1789-1800, Republic's Memorandum.

[28] *Id*. at 1767.

indicated by the Court, there is no reason why the search for these documents should delay the filing of the formal offer of evidence.

[Petitioner's] counsel . . . admits that faced with other pressing matters, he lost track of the time. We cannot just turn a blind eye on the negligence of the parties and in their failure to observe the orders of this Court. The carelessness of [petitioner's] counsel in keeping track of the deadlines is an unacceptable reason for the Court to set aside its Order and relax the observance of the period set for filing the formal offer of evidence.[29] (Citation omitted)

The Sandiganbayan also found that the Republic failed to prosecute its case for an unreasonable length of time and to comply with the court's rules.[30] The court also noted that the documentary evidence presented by the Republic consisted mostly of certified true copies.[31] However, the persons who certified the documents as copies of the original were not presented.[32] Hence, the evidence lacked probative value.[33] The dispositive portion of the assailed Resolution reads:

**ACCORDINGLY**, there being no valid and cogent justification shown by the plaintiff for the Court to Grant its Motion for Reconsideration and admit its Formal Offer of Evidence, the plaintiff's Motion for Reconsideration and to Admit Attached Formal Offer of Evidence is **DENIED**. The Motion to Dismiss on Demurrer to Evidence filed by the defendant Ignacio B. Gimenez and adopted

---

[29] *Id*. at 129-130, Resolution dated September 13, 2006.

[30] *Id*. at 131-132, *citing* RULES OF COURT, Rule 17, Sec. 3, which provides:

SEC. 3. Dismissal due to fault of plaintiff.— If for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[31] *Id*. at 132.

[32] *Id*.

[33] *Id*.

by defendant Fe Roa Gimenez is **GRANTED.** The case is then **DISMISSED**.

SO ORDERED.[34] (Emphasis in the original)

The Republic filed its Petition for Review on Certiorari dated November 3, 2006 before this court.[35]

The Gimenez Spouses were required to comment on the Petition.[36] This court noted the separate Comments[37] filed by the Gimenez Spouses.[38] The Republic responded to the Comments through a Consolidated Reply[39] dated June 22, 2007.

In the Resolution[40] dated August 29, 2007, this court required the parties to submit their memoranda.[41]

On February 18, 2008, this court resolved to require the parties to "move in the premises[.]"[42]

On March 2, 2012, the Republic filed a Motion for Leave to Re-open Proceedings, to File and Admit Attached Supplement to the Petition for Certiorari.[43] In this Supplement, the Republic argued that the second assailed Resolution dated September 13, 2006 was void for failing to state the facts and the law on

---

[34] *Id*. at 133.

[35] *Id*. at 834 and 919, Petition.

[36] *Id*. at 1634, Supreme Court Resolution dated December 11, 2006, 1636, Fe Roa Gimenez's Comment/Opposition to Petition for Review, and 1655, Supreme Court Resolution dated March 14, 2007.

[37] *Id*. at 1635-1641, Fe Roa Gimenez's Comment/Opposition to Petition for Review, and 1657-1662, Ignacio B. Gimenez's Comment.

[38] *Id*. at 1655, Supreme Court Resolution dated March 14, 2007, and 1671, Supreme Court Resolution dated June 18, 2007.

[39] *Id*. at 1676-1686.

[40] *Id*. at 1687a-1687b.

[41] *Id*. at 1687a.

[42] *Id*. at 1808, Supreme Court Resolution dated February 18, 2008.

[43] *Id*. at 1895-1898.

which it was based.[44] This Motion was granted, and the Gimenez Spouses were required to file their Comment on the Supplement to the Petition.[45] Thereafter, the Republic filed its Reply.[46]

Fe Roa Gimenez filed a Rejoinder[47] dated December 19, 2012 which was expunged by this court in a Resolution[48] dated January 23, 2013. Ignacio Gimenez's Motion for Leave to File and Admit Attached Rejoinder[49] was denied.[50]

The Republic raised the following issues:

Whether or not the Sandiganbayan gravely erred in dismissing the case in the light of the allegations in the Complaint which were substantiated by overwhelming evidence presented vis-a-vis the material admissions of spouses Gimenezes as their answer failed to specifically deny that they were dummies of former President Ferdinand E. Marcos and that they acquired illegal wealth grossly disproportionate to their lawful income in a manner prohibited under the Constitution and Anti-Graft Statutes.

Whether or not the Sandiganbayan gravely erred in denying petitioner's Motion to Admit Formal Offer of Evidence on the basis of mere technicalities, depriving petitioner of its right to due process.

Whether or not the Sandiganbayan gravely erred in making a sweeping pronouncement that petitioner's evidence do not bear any probative value.[51]

The issues for consideration of this court are:

First, whether a Petition for Review on Certiorari was the proper remedy to assail the Sandiganbayan Resolutions; and

---

[44] *Id*. at 1902, Supplement to the Petition for *Certiorari*.

[45] *Id*. at 1912, Supreme Court Resolution dated June 20, 2012.

[46] *Id*. at 1974-1991.

[47] *Id*. at 1994-2000.

[48] *Id*. at 2015-2016.

[49] *Id*. at 2004-2005.

[50] *Id*. at 2015, Supreme Court Resolution dated January 23, 2013.

[51] *Id*. at 1769, Republic's Memorandum.

Second, whether the Sandiganbayan erred in holding that petitioner Republic of the Philippines waived the filing of its Formal Offer of Evidence and in granting respondents Ignacio Gimenez and Fe Roa Gimenez's Motion to Dismiss on demurrer to evidence.

We grant the Petition.

I

Respondent Ignacio Gimenez pictures petitioner as being confused as to the proper mode of review of the Sandiganbayan Resolutions. According to him, petitioner claims that the Sandiganbayan committed grave abuse of discretion.[52] Hence, petitioner should have filed a petition for certiorari under Rule 65 and not a petition for review under Rule 45 of the Rules of Court.[53] Nevertheless, the Sandiganbayan did not commit any error, and petitioner has to show that the Sandiganbayan committed grave abuse of discretion amounting to lack of or in excess of jurisdiction.[54]

Observance of the proper procedure before courts, especially before the Sandiganbayan, cannot be stressed enough. Due process is enshrined in the Constitution, specifically the Bill of Rights.[55]

---

[52] *Id*. at 1702, Ignacio B. Gimenez's Memorandum.

[53] *Id*.

[54] *Id*. at 1702-1703.

[55] *See* CONST., Art. III, Secs. 1 and 14, which provide:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

. . . .

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after

"Due process [in criminal cases] guarantees the accused a presumption of innocence until the contrary is proved[.]"[56] "Mere suspicion of guilt should not sway judgment."[57]

To determine whether a petition for review is the proper remedy to assail the Sandiganbayan Resolutions, we review the nature of actions for reconveyance, revision, accounting, restitution, and damages.

Actions for reconveyance, revision, accounting, restitution, and damages for ill-gotten wealth are also called civil forfeiture proceedings.

Republic Act No. 1379[58] provides for the procedure by which forfeiture proceedings may be instituted against public officers or employees who "[have] acquired during his [or her] incumbency an amount of property which is manifestly out of proportion to his [or her] salary as such public officer or employee and to his [or her] other lawful income and the income from legitimately acquired property, [which] property shall be presumed prima facie to have been unlawfully acquired."[59]

This court has already settled the Sandiganbayan's jurisdiction over civil forfeiture cases:

. . . violations of R.A. No. 1379 are placed under the jurisdiction of the Sandiganbayan, even though the proceeding is civil in nature,

---

arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[56] *Perez v. Estrada*, 412 Phil. 686, 705 (2001) [Per *J*. Vitug, *En Banc*]. *See Marcos v. Sandiganbayan (1st Division)*, 357 Phil. 762, 783 (1998) [Per *J*. Purisima, *En Banc*].

[57] *People v. Bagus*, 342 Phil. 836, 853 (1997) [Per *J*. Francisco, Third Division].

[58] Rep. Act No. 1379 (1955) is entitled An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings therefor.

[59] Rep. Act No. 1379 (1955), Sec. 2.

since the forfeiture of the illegally acquired property amounts to a penalty.[60]

In *Garcia v. Sandiganbayan, et al.*,[61] this court re-affirmed the doctrine that forfeiture proceedings under Republic Act No. 1379 are civil in nature.[62] Civil forfeiture proceedings were also differentiated from plunder cases:

> . . . a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case. . . . In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. . . . On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.[63] (Citation omitted)

To stress, the quantum of evidence required for forfeiture proceedings under Republic Act No. 1379 is the same with other civil cases — preponderance of evidence.[64]

When a criminal case based on demurrer to evidence is dismissed, the dismissal is equivalent to an acquittal.[65]

---

[60] *Maj. Gen. Garcia v. Sandiganbayan*, 499 Phil. 589, 614 (2005) [Per *J*. Tinga, *En Banc*]. *See* Pres. Decree No. 1486 (1978), Sec. 4, which created the Sandiganbayan and vested jurisdiction of civil forfeiture cases under Rep. Act No. 1379. In *Republic v. Sandiganbayan*, G.R. No. 90529, August 16, 1991, 200 SCRA 667, 674-676 [Per *J*. Regalado, *En Banc*], this court traced the legislative history of the Sandiganbayan's jurisdiction over civil forfeiture proceedings.

[61] 618 Phil. 346 (2009) [Per *J*. Velasco, Jr., Third Division].

[62] *Id*. at 362-363.

[63] *Id*.

[64] *See* Exec. Order No. 14-A (1986), Sec. 1, entitled Amending Executive Order No. 14.

[65] *See Singian, Jr. v. Sandiganbayan (3rd Division)*, G.R. Nos. 195011-19, September 30, 2013, 706 SCRA 451 [Per *J*. Del Castillo, Second Division]

As a rule, once the court grants the demurrer, the grant amounts to an acquittal; any further prosecution of the accused would violate the constitutional proscription on double jeopardy.[66]

Hence, the Republic may only assail an acquittal through a petition for certiorari under Rule 65 of the Rules of Court:

> Accordingly, a review of a dismissal order of the Sandiganbayan granting an accused's demurrer to evidence may be done via the special civil action of certiorari under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[67] (Citation omitted)

In this case, a civil forfeiture under Republic Act No. 1379, petitioner correctly filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court. Section 1 of the Rule provides the mode of appeal from judgments, final orders, or resolutions of the Sandiganbayan:

> SECTION 1. Filing of petition with Supreme Court.— A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, 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 shall raise only questions of law which must be distinctly set forth.

II

Petitioner argues that substantial justice requires doing away with the procedural technicalities.[68] Loss of vital documentary proof warranted extensions to file the Formal Offer of Evidence.[69] Honest efforts to locate several missing documents resulted in

---

and *People v. Sandiganbayan, et al.*, 681 Phil. 90, 109 (2012) [Per *J*. Brion, *En Banc*].

[66] *People v. Sandiganbayan, et al.*, 681 Phil. 90, 109 (2012) [Per *J*. Brion, *En Banc*].

[67] *Id*. at 110.

[68] *Rollo*, p. 1782, Republic's Memorandum.

[69] *Id*.

petitioner's inability to file the pleading within the period granted by the Sandiganbayan.[70]

Respondent Ignacio Gimenez argues that petitioner cannot fault the Sandiganbayan for its incompetence during trial.[71] Even if the evidence were formally offered within the prescribed period, PCGG's evidence still had no probative value.[72] It is solely petitioner's fault "that the persons who certified to the photocopies of the originals were not presented to testify[.]"[73] It is also misleading to argue that the pieces of documentary evidence presented are public documents.[74] "The documents are not public in the sense that these are official issuances of the Philippine government."[75] "The bulk consists mainly of notarized, private documents that have simply been certified true and faithful."[76]

According to respondent Fe Roa Gimenez, petitioner tries to excuse its non-filing of the Formal Offer of Evidence within the prescribed period by raising its efforts to locate the 66 missing documents.[77] However, the issue of the missing documents was laid to rest during the hearing on November 16, 2004.[78] The Sandiganbayan gave petitioner until March 2005 to produce the documents; otherwise, these would be excluded.[79] The testimonies of the witnesses related to the missing documents would also be expunged from the case records.[80]

---

[70] *Id*.

[71] *Id*. at 1706, Ignacio B. Gimenez's Memorandum.

[72] *Id*.

[73] *Id*.

[74] *Id*. at 1702.

[75] *Id*.

[76] *Id*.

[77] *Id*. at 1712, Fe Roa Gimenez's Memorandum.

[78] *Id*. at 1714. The Order is not referenced to in the records.

[79] *Id*.

[80] *Id*.

Moreover, respondent Fe Roa Gimenez claims that "[t]he Sandiganbayan did not err when it ruled that the great bulk of the documentary evidence offered by the PCGG have no probative value."[81] Aside from the 66 missing documents it failed to present, almost all of petitioner's pieces of documentary evidence were mere photocopies.[82] The few that were certified true copies were not testified on by the persons who certified these documents.[83]

Our Rules of Court lays down the procedure for the formal offer of evidence. Testimonial evidence is offered "at the time [a] witness is called to testify."[84] Documentary and object evidence, on the other hand, are offered "after the presentation of a party's testimonial evidence."[85] Offer of documentary or object evidence is generally done orally unless permission is given by the trial court for a written offer of evidence.[86]

More importantly, the Rules specifically provides that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case.[87] "Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it."[88]

---

[81] *Id*. at 1717.

[82] *Id*.

[83] *Id*.

[84] RULES OF COURT, Rule 132, Sec. 35 provides:

SEC. 35. When to make offer.— As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

[85] RULES OF COURT, Rule 132, Sec. 35.

[86] RULES OF COURT, Rule 132, Sec. 35.

[87] *See* RULES OF COURT, Rule 128, Sec. 3, which provides:

SEC. 3. Admissibility of evidence.— Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

[88] *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 575 (2007) [Per *J*. Velasco, Jr., Second Division]. *See Constantino v. Court of Appeals*, 332 Phil. 68, 75 (1996) [Per *J*. Bellosillo, First Division].

Rule 132, Section 34 provides:

SEC. 34. Offer of evidence.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.[89] Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it."[90]

This court explained further the reason for the rule:

The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility*. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[91] (Emphasis supplied, citations omitted)

To consider a party's evidence which was not formally offered during trial would deprive the other party of due process.

---

[89] *See Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 543 (2006) [Per *J*. Callejo, Sr., First Division], *citing Pigao v. Rabanillo*, 522 Phil. 506, 517-518 (2006) [Per *J*. Corona, Second Division].

[90] *Villaluz v. Ligon*, 505 Phil. 572, 588 (2005) [Per *J*. Austria-Martinez, Second Division].

[91] *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 578-579 (2007) [Per *J*. Velasco, Jr., Second Division]. *See People v. Logmao*, 414 Phil. 378, 385 (2001) [Per *J*. Bellosillo, Jr., Second Division].

Evidence not formally offered has no probative value and must be excluded by the court.[92]

Petitioner's failure to file its written Formal Offer of Evidence of the numerous documentary evidence presented within the prescribed period is a non-issue. In its first assailed Resolution dated May 25, 2006, the Sandiganbayan declared that petitioner waived the filing of its Formal Offer of Evidence when it failed to file the pleading on May 13, 2006, the deadline based on the extended period granted by the court. Petitioner was granted several extensions of time by the Sandiganbayan totalling 75 days from the date petitioner terminated its presentation of evidence. Notably, this 75-day period included the original 30-day period. Subsequently, petitioner filed a Motion for Reconsideration and to Admit Attached Formal Offer of Evidence, and the Formal Offer of Evidence.

In resolving petitioner's Motion for Reconsideration and to Admit Attached Formal Offer of Evidence, the Sandiganbayan found the carelessness of petitioner's counsel unacceptable. According to the Sandiganbayan, it could not countenance the non-observance of the court's orders.

This court has long acknowledged the policy of the government to recover the assets and properties illegally acquired or misappropriated by former President Ferdinand E. Marcos, his wife Mrs. Imelda R. Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.[93] Hence, this

---

[92] *See Spouses Ong v. Court of Appeals*, 361 Phil. 338, 350-352 (1999) [Per *J*. Panganiban, Third Division]. *See also Westmont Investment Corporation v. Francia, Jr., et al.*, 678 Phil. 180, 194 (2011) [Per *J*. Mendoza, Third Division]. We recall, however, that admissibility of evidence is a different concept from probative value under evidentiary rules. *See Atienza v. Board of Medicine, et al.*, 657 Phil. 536, 543 (2011) [Per *J*. Nachura, Second Division], *citing PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59 (1998) [Per *J*. Romero, Third Division].

[93] *Marcos, Jr. v. Republic*, G.R. No. 189434, April 25, 2012, 671 SCRA 280, 308-309 [Per *J*. Sereno (now *C.J.*), Second Division]. *Republic v. Sandiganbayan*, 461 Phil. 598, 610 (2003) [Per *J*. Corona, *En Banc*]. *See* Exec. Order No. 1 (1986), entitled Creating the Presidential Commission on Good Government, Proclamation No. 3 (1986), entitled Declaring a

court has adopted a liberal approach regarding technical rules of procedure in cases involving recovery of ill-gotten wealth:

*In all the alleged ill-gotten wealth cases filed by the PCGG, this Court has seen fit to set aside technicalities and formalities that merely serve to delay or impede judicious resolution. This Court prefers to have such cases resolved on the merits at the Sandiganbayan*. But substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should now be relentlessly and firmly pursued. Almost two decades have passed since the government initiated its search for and reversion of such ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the ownership of these funds and other assets be finally determined and resolved with dispatch, free from all the delaying technicalities and annoying procedural sidetracks.[94] (Emphasis supplied, citation omitted)

To be clear, petitioner was able to file its Formal Offer of Evidence, albeit, belatedly. Petitioner hurdled 19 years of trial before the Sandiganbayan to present its evidence as shown in its extensive Formal Offer of Evidence. As petitioner argues:

Undeniable from the records of the case is that petitioner was vigorous in prosecuting the case. The most tedious and crucial stage of the litigation and presentation of evidence has been accomplished. Petitioner completed its presentation of evidence proving the ill-gotten nature and character of the funds and assets sought to be

---

National Policy to Implement Reforms Mandated by the People Protecting their Basic Rights, Adopting a Provisional Constitution, and Providing for an Orderly Transition to a Government under a New Constitution, Art. II, Sec. 1(d), Exec. Order No. 14 (1986), entitled Defining the Jurisdiction over Cases Involving the Ill-gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees.

[94] *Republic v. Sandiganbayan*, 453 Phil. 1059, 1087-1088 (2003) [Per J. Corona, *En Banc*]. In this case, this court set aside the Sandiganbayan Resolution that denied petitioner's Motion for Summary Judgment. (*Id*. at 1077 and 1150).

recovered in the present case. It presented vital testimonial and documentary evidence consisting of voluminous record proving the gross disparity of the subject funds to spouses Gimenezes' combined declared income which must be reconveyed to the Republic for being acquired in blatant violation of the Constitution and the Anti-Graft statutes.[95]

This court is not unmindful of the difficulty in gathering voluminous documentary evidence in cases of forfeiture of ill-gotten wealth acquired throughout the years. It is never easy to prosecute corruption and take back what rightfully belongs to the government and the people of the Republic.

This is not the first time that this court relaxed the rule on formal offer of evidence.

*Tan v. Lim*[96] arose from two civil Complaints: one for injunction and another for legal redemption, which were heard jointly before the trial court.[97] The defendant did not file a Formal Offer of Evidence in the injunction case[98] and merely adopted the evidence offered in the legal redemption case.[99] The trial court held that the defendant's failure to file his Formal Offer of Evidence in the injunction case rendered the plaintiff's evidence therein as uncontroverted.[100] The Court of Appeals reversed the Decision and was affirmed by this court.[101] This court ruled that while the trial court's reasoning in its Decision was technically sound, a liberal interpretation was more appropriate and in line with substantial justice:

*It may be true that Section 34, Rule 132 of the rules directs the court to consider no evidence which has not been formally offered and that under Section 35, documentary evidence is offered after*

---

[95] *Rollo*, p. 1781, Republic's Memorandum.

[96] 357 Phil. 452 (1998) [Per *J*. Martinez, Second Division].

[97] *Id*. at 456-457.

[98] *Id*. at 461.

[99] *Id*. at 477.

[100] *Id*. at 474.

[101] *Id*. at 474-475 and 481-482.

*presentation of testimonial evidence*. However, a liberal interpretation of these Rules would have convinced the trial court that a separate formal offer of evidence in Civil Case No. 6518 was superfluous because not only was an offer of evidence made in Civil Case No. 6521 that was being jointly heard by the trial court, counsel for Jose Renato Lim had already declared he was adopting these evidences for Civil Case No. 6518. The trial court itself stated that it would freely utilize in one case evidence adduced in the other only to later abandon this posture. Jose Renato Lim testified in Civil Case No. 6518. The trial court should have at least considered his testimony since at the time it was made, the rules provided that testimonial evidence is deemed offered at the time the witness is called to testify. *Rules of procedure should not be applied in a very rigid, technical case as they are devised chiefly to secure and not defeat substantial justice*.

. . . .

The logic of the Court of Appeals is highly persuasive. *Indeed, apparently, the trial court was being overly technical about the non-submission of Jose Renato Lim's formal offer of evidence. This posture not only goes against Section 6, Rule 1 of the Rules of Civil Procedure decreeing a liberal construction of the rules to promote a just, speedy and inexpensive litigation but ignores the consistent rulings of the Court against utilizing the rules to defeat the ends of substantial justice*. Despite the intervening years, the language of the Court in Manila Railroad Co. *vs*. Attorney-General, still remains relevant:

> "x x x. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adapted to obtain that thing. In other words, it is a means to an end. It is the means by which the powers of the court are made effective in just judgments. When it loses the character of the one and takes on that of the other the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism."[102] (Emphasis supplied, citations omitted)

---

[102] *Id*. at 478-480. This court applied 1964 RULES OF COURT, Rule 132, Sec. 35, which provides:

Furthermore, "subsequent and substantial compliance . . . may call for the relaxation of the rules of procedure."[103]

Weighing the amount of time spent in litigating the case against the number of delays petitioner incurred in submitting its Formal Offer of Evidence and the state's policy on recovering ill-gotten wealth, this court is of the belief that it is but only just that the Rules be relaxed and petitioner be allowed to submit its written Formal Offer of Evidence. The Sandiganbayan's Resolutions should be reversed.

III

According to petitioner, the Sandiganbayan erred when it granted the demurrer to evidence filed by respondents and dismissed the case despite a "*prima facie* foundation [based on the pleadings and documents on record] that spouses Gimenezes amassed enormous wealth grossly disproportionate to their lawful income or declared lawful assets."[104]

Similarly, the Complaint alleged specific acts committed by respondent Ignacio Gimenez:

> [T]aking undue advantage of his relationship, influence, and connection, by himself and/or in unlawful concert and active collaboration with former President Ferdinand E. Marcos and Imelda R. Marcos for the purpose of mutually enriching themselves and preventing the disclosure and recovery of assets illegally obtained: (a) acted as the dummy, nominee or agent of former President Ferdinand E. Marcos and Imelda R. Marcos in several corporations such as, the Allied Banking Corporation, Acoje Mining Corporation, Baguio Gold Mining, Multi National Resources, Philippine Oversees, Inc. and Pioneer Natural Resources; (b) unlawfully obtained, through corporations organized by them such as the New City Builders, Inc. (NCBI), multi-million peso contracts with the government buildings,

---

SEC. 35. Offer of Evidence.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[103] *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005) [Per *J.* Carpio, First Division].

[104] *Rollo*, p. 1772, Republic's Memorandum.

such as the University of Life Sports Complex and Dining Hall as well as projects of the National Manpower Corporation, Human Settlements, GSIS, and Maharlika Livelihood, to the gross and manifest disadvantage of the Government and the Filipino people; and (c) in furtherance of the above stated illegal purposes, organized several establishments engaged in food, mining and other businesses such as the Transnational Construction Corporation, Total Systems Technology, Inc., Pyro Control Technology Corporation, Asian Alliance, Inc., A & T Development Corporation, RBO Agro Forestry Farm Development Corporation, Bathala Coal Mining Corporation, Coal Basis Mining Corporation, Titan Coal Mining Corporation, GEI Guaranteed Education, Inc., and I.B. Gimenez Securities, Inc.[105]

Despite the specific allegations in the Complaint, petitioner contends that respondents merely gave general denials to the allegations in the Complaint.[106] "[N]o specific denial [was] made on the material allegations [in] the [C]omplaint."[107]

Respondents, on the other hand, assert that the Sandiganbayan was correct in granting the Motion to Dismiss on demurrer to evidence.

Respondent Ignacio Gimenez claims that petitioner cannot be excused from filing its Formal Offer of Evidence considering the numerous extensions given by the Sandiganbayan. Petitioner had all the resources and time to gather, collate, and secure the necessary evidence to build its case.[108] Petitioner's presentation of evidence took 19 years to complete, and yet it failed to submit the necessary documents and pleading.[109]

Similarly, respondent Fe Roa Gimenez argues that petitioner was negligent in failing to comply with the Sandiganbayan's orders considering the inordinate amount of time given to

---

[105] *Id*. at 1776-1777.

[106] *Id*. at 1778.

[107] *Id*.

[108] *Id*. at 1701, Ignacio B. Gimenez's Memorandum.

[109] *Id*. at 1701-1702.

petitioner to present evidence, which resulted in only five witnesses in 19 years.[110]

To determine the propriety of granting respondents' Motion to Dismiss based on Demurrer to Evidence, we review the nature of demurrer.

Rule 33, Section 1 of the Rules of Court provides:

SECTION 1. Demurrer to evidence.— After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

In *Oropesa v. Oropesa*[111] where this court affirmed the dismissal of the case on demurrer to evidence due to petitioner's non-submission of the Formal Offer of Evidence,[112] demurrer to evidence was defined as:

. . . "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue." We have also held that a demurrer to evidence "authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought."[113] (Citations omitted)

This court has laid down the guidelines in resolving a demurrer to evidence:

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's

---

[110] *Id*. at 1711-1713, Fe Roa Gimenez's Memorandum.

[111] G.R. No. 184528, April 25, 2012, 671 SCRA 174 [Per *J*. Leonardo-de Castro, First Division].

[112] *Id*. at 185.

[113] *Id*.

evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery.[114]

Furthermore, this court already clarified what the trial court determines when acting on a motion to dismiss based on demurrer to evidence:

> What should be resolved in a motion to dismiss based on a demurrer to evidence is *whether the plaintiff is entitled to the relief based on the facts and the law*. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. . . .[115] (Emphasis supplied, citation omitted)

Petitioner, in its Supplement to the Petition, argued that the testimonial evidence it had presented and offered during trial warranted consideration and analysis.[116] The Sandiganbayan erroneously excluded these testimonies in determining whether to grant the motion to dismiss or not, hence:

> . . . even assuming that the Sandiganbayan denied petitioner's formal offer of evidence, petitioner still had testimonial evidence in its favor which should [have] been considered. It behoved then upon the Sandiganbayan to discuss or include in its discussion, at the very least, an analysis of petitioner's testimonial evidence.[117]

---

[114] *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 324 (2007) [Per *J.* Nachura, Third Division], *citing Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 540-541 (2006) [Per *J.* Callejo, Sr., First Division].

[115] *Casent Realty Development Corporation v. Philbanking Corporation*, 559 Phil. 793, 801-802 (2007) [Per *J.* Velasco, Jr., Second Division].

[116] *Rollo*, p. 1906, Supplement to the Petition for *Certiorari*.

[117] *Id*.

With our ruling reversing the Sandiganbayan's Resolutions on petitioner's Formal Offer of Evidence, what should be determined now by the Sandiganbayan is whether petitioner's evidence is sufficient to entitle it to the relief it seeks after the Sandiganbayan rested its case. Petitioner is required to establish preponderance of evidence.

In the second assailed Resolution, the Sandiganbayan granted respondents' Motion to Dismiss based on the lack of Formal Offer of Evidence of petitioner. At the same time, it observed that the pieces of documentary evidence presented by petitioner were mostly certified true copies of the original. In passing upon the probative value of petitioner's evidence, the Sandiganbayan held:

> On another note, the evidence presented by the plaintiff consisted mainly of certified true copies of the original. These certified copies of documentary evidence presented by the plaintiff were not testified on by the person who certified them to be photocopies of the original. Hence, these evidence do not appear to have significant substantial probative value.[118]

Petitioner faults the Sandiganbayan for making "a general and sweeping statement that the evidence presented by petitioner lacked probative value for the reason that they are mainly certified true copies which had not been testified on by the person who certified [them]."[119] Thus, its right to due process was violated when the Sandiganbayan rejected petitioner's documentary evidence in the same Resolution which dismissed the case.[120]

Petitioner argues that: a) respondents unqualifiedly admitted the identity and authenticity of the documentary evidence presented by petitioner;[121] and b) the documents it presented were public documents, and there was no need for the

---

[118] *Id*. at 132, Resolution dated September 13, 2006.

[119] *Id*. at 1784, Republic's Memorandum.

[120] *Id*. at 1785.

[121] *Id*. at 1786.

identification and authentication of the original documentary exhibits.[122] Petitioner relies on the Sandiganbayan Order[123] dated August 6, 2002. The Order reads:

> Considering the manifestation of Atty. Reno Gonzales, counsel for plaintiff/PCGG, that the *defendant Fe Roa Gimenez, through counsel, is willing to stipulate that the documents to be presented and identified by the witness are in her custody as Records Officer of the PCGG*, the parties agreed to dispense with the testimony of Ma. Lourdes Magno.
>
> WHEREFORE, and as prayed for, the continuation of the presentation of plaintiff's evidence is set on October 9 and 10, 2002, both at 8:30 o'clock [sic] in the morning.
>
> SO ORDERED.[124] (Emphasis supplied)

Petitioner claims that the following exhibits were acquired in relation to the PCGG's functions prescribed under Executive Order No. 1, Section 3(b),[125] and form part of the official records of the PCGG:[126] "Certifications as to the various positions held in Government by Fe Roa-Gimenez, her salaries and compensation during her stint as a public officer, the BIR Income Tax Returns and Statement of Assets and Liabilities showing the declared income of spouses Gimenezes; the Articles of Incorporation of various corporations showing spouses Gimenezes' interests on various corporations; and several transactions

---

[122] *Id*. at 1788.

[123] *Id*. at 1632.

[124] *Id*.

[125] Exec. Order No. 1 (1986), Sec. 3 provides:

> Sec. 3. The Commission shall have the power and authority:
>
> . . . .
>
> (b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

[126] *Rollo*, 1786-1787, Republic's Memorandum.

involving huge amounts of money which prove that they acted as conduit in the disbursement of government funds."[127]

On the other hand, respondent Ignacio Gimenez argues that petitioner's documents are not "official issuances of the Philippine government."[128] They are mostly notarized private documents.[129] Petitioner's evidence has no probative value; hence, a dismissal on demurrer to evidence is only proper.[130] Respondent Fe Roa Gimenez claims that the Sandiganbayan did not err in holding that the majority of petitioner's documentary evidence has no probative value, considering that most of these documents are only photocopies.[131]

The evidence presented by petitioner before the Sandiganbayan deserves better treatment.

For instance, the nature and classification of the documents should have been ruled upon. Save for certain cases, the original document must be presented during trial when the subject of the inquiry is the contents of the document.[132] This is the Best Evidence Rule provided under Rule 130, Section 3 of the Rules of Court:

> SEC. 3. Original document must be produced; exceptions.— When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

---

[127] *Id*. at 1725-1726.

[128] *Id*. at 1702, Ignacio B. Gimenez's Memorandum.

[129] *Id*.

[130] *Id*. at 1706.

[131] *Id*. at 1717, Fe Roa Gimenez's Memorandum.

[132] *See Republic v. Marcos-Manotoc, et al.*, 681 Phil. 380, 402-403 (2012) [Per *J*. Sereno (now *C.J*.), Second Division], *Heirs of Margarita Prodon v. Heirs of Maximo S. Alvarez and Valentina Clave*, G.R. No. 170604, September 2, 2013, 704 SCRA 465, 478 [Per *J*. Bersamin, First Division], and *Bognot v. RRI Lending Corporation*, G.R. No. 180144, September 24, 2014, 736 SCRA 357, 377 [Per *J*. Brion, Second Division].

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

In case of unavailability of the original document, secondary evidence may be presented[133] as provided for under Sections 5 to 7 of the same Rule:

*SEC. 5. When original document is unavailable.— When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.*

SEC. 6. When original document is in adverse party's custody or control. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss. (5a)

*SEC. 7. Evidence admissible when original document is a public record.— When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.* (Emphasis supplied)

---

[133] *See Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013, 695 SCRA 599, 611 [Per *J.* Mendoza, Third Division].

In *Citibank, N.A. v. Sabeniano*,[134] citing *Estrada v. Hon. Desierto*,[135] this court clarified the applicability of the Best Evidence Rule:

As the afore-quoted provision states, the best evidence rule applies only when the subject of the inquiry is the contents of the document. The scope of the rule is more extensively explained thus —

> But even with respect to documentary evidence, the best evidence rule applies only when the content of such document is the subject of the inquiry. *Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible (5 Moran, op. cit., pp. 76-66; 4 Martin, op. cit., p. 78). Any other substitutionary evidence is likewise admissible without need for accounting for the original.*
>
> *Thus, when a document is presented to prove its existence or condition it is offered not as documentary, but as real, evidence*. Parol evidence of the fact of execution of the documents is allowed (Hernaez, et al. *vs*. McGrath, etc., et al., 91 Phil[.] 565). x x x

In *Estrada v. Desierto*, this Court had occasion to rule that —

> It is true that the Court relied not upon the original but only [a] copy of the Angara Diary as published in the Philippine Daily Inquirer on February 4-6, 2001. In doing so, the Court, did not, however, violate the best evidence rule. Wigmore, in his book on evidence, states that:
>
> "Production of the original may be dispensed with, in the trial court's discretion, whenever in the case in hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.
>
> "x x x x x x x x x
>
> "In several Canadian provinces, the principle of unavailability has been abandoned, for certain documents in which ordinarily no real dispute arised [sic]. This measure is a sensible and progressive one and deserves universal adoption (post, Sec. 1233).

---

[134] 535 Phil. 384 (2006) [Per *J*. Chico-Nazario, First Division].

[135] 408 Phil. 194, 230 (2001) [Per *J*. Puno, *En Banc*].

Its essential feature is that a copy may be used unconditionally, if the opponent has been given an opportunity to inspect it."

*This Court did not violate the best evidence rule when it considered and weighed in evidence the photocopies and microfilm copies of the PNs, MCs, and letters submitted by the petitioners to establish the existence of respondent's loans*. The terms or contents of these documents were never the point of contention in the Petition at bar. It was respondent's position that the PNs in the first set (with the exception of PN No. 34534) never existed, while the PNs in the second set (again, excluding PN No. 34534) were merely executed to cover simulated loan transactions. As for the MCs representing the proceeds of the loans, the respondent either denied receipt of certain MCs or admitted receipt of the other MCs but for another purpose. Respondent further admitted the letters she wrote personally or through her representatives to Mr. Tan of petitioner Citibank acknowledging the loans, except that she claimed that these letters were just meant to keep up the ruse of the simulated loans. *Thus, respondent questioned the documents as to their existence or execution, or when the former is admitted, as to the purpose for which the documents were executed, matters which are, undoubtedly, external to the documents, and which had nothing to do with the contents thereof*.

Alternatively, even if it is granted that the best evidence rule should apply to the evidence presented by petitioners regarding the existence of respondent's loans, it should be borne in mind that the rule admits of the following exceptions under Rule 130, Section 5 of the revised Rules of Court[.][136] (Emphasis supplied, citation omitted)

Furthermore, for purposes of presenting these as evidence before courts, documents are classified as either public or private. Rule 132, Section 19 of the Rules of Court provides:

SEC. 19. Classes of Documents.— For the purpose 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;

---

[136] 535 Phil. 384, 457-459 (2006) [Per *J*. Chico-Nazario, First Division].

(b) Documents acknowledge 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.

The same Rule provides for the effect of public documents as evidence and the manner of proof for public documents:

SEC. 23. Public documents as evidence.— Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

SEC. 24. Proof of official record.— The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

SEC. 25. What attestation of copy must state.— Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

. . . .

*SEC. 27. Public record of a private document.— An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the*

*record, with an appropriate certificate that such officer has the custody.*

. . . .

SEC. 30. Proof of notarial documents.— Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. (Emphasis supplied)

Emphasizing the importance of the correct classification of documents, this court pronounced:

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, *is self-authenticating and requires no further authentication in order to be presented as evidence in court*. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court.[137] (Emphasis supplied)

The distinction as to the kind of public document under Rule 132, Section 19 of the Rules of Court is material with regard to the fact the evidence proves. In *Philippine Trust Company v. Hon. Court of Appeals, et al.*,[138] this court ruled that:

. . . not all types of public documents are deemed prima facie evidence of the facts therein stated:

---

[137] *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156 [Per *J*. Bersamin, First Division].

[138] 650 Phil. 54 (2010) [Per *J*. Leonardo-De Castro, First Division].

. . . .

"Public records made in the performance of a duty by a public officer" include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the acknowledgement, affirmation or oath, or jurat portion of public documents under Section 19(c). *Hence, under Section 23, notarized documents are merely proof of the fact which gave rise to their execution* (e.g., the notarized Answer to Interrogatories . . . is proof that Philtrust had been served with Written Interrogatories), *and of the date of the latter* (e.g., the notarized Answer to Interrogatories is proof that the same was executed on October 12, 1992, the date stated thereon), *but is not prima facie evidence of the facts therein stated.* Additionally, under Section 30 of the same Rule, the acknowledgement in notarized documents is prima facie evidence of the execution of the instrument or document involved (e.g., the notarized Answer to Interrogatories is prima facie proof that petitioner executed the same).

*The reason for the distinction lies with the respective official duties attending the execution of the different kinds of public instruments. Official duties are disputably presumed to have been regularly performed. As regards affidavits, including Answers to Interrogatories which are required to be sworn to by the person making them, the only portion thereof executed by the person authorized to take oaths is the jurat.* The presumption that official duty has been regularly performed therefore applies only to the latter portion, wherein the notary public merely attests that the affidavit was subscribed and sworn to before him or her, on the date mentioned thereon. Thus, even though affidavits are notarized documents, we have ruled that affidavits, being self-serving, must be received with caution.[139] (Emphasis supplied, citations omitted)

In *Salas v. Sta. Mesa Market Corporation*,[140] this court discussed the difference between mere copies of audited financial statements submitted to the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC), and certified true copies of audited financial statements obtained or secured from the BIR or the SEC which are public documents under Rule 132, Section 19(c) of the Revised Rules of Evidence:

---

[139] *Id*. at 68-70.

[140] 554 Phil. 343 (2007) [Per *J*. Corona, First Division].

The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. *Financial statements, whether audited or not, are, as [a] general rule, private documents. However, once financial statements are filed with a government office pursuant to a provision of law, they become public documents*.

Whether a document is public or private is relevant in determining its admissibility as evidence. Public documents are admissible in evidence even without further proof of their due execution and genuineness. On the other hand, private documents are inadmissible in evidence unless they are properly authenticated. Section 20, Rule 132 of the Rules of Court provides:

. . . .

*Petitioner and respondents agree that the documents presented as evidence were mere copies of the audited financial statements submitted to the BIR and SEC. Neither party claimed that copies presented were certified true copies of audited financial statements obtained or secured from the BIR or the SEC which under Section 19(c), Rule 132 would have been public documents. Thus, the statements presented were private documents. Consequently, authentication was a precondition to their admissibility in evidence*.

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented. The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.[141] (Emphasis supplied, citations omitted)

---

[141] *Id*. at 348-350.

Indeed, in *Republic v. Marcos-Manotoc*,[142] this court held that mere collection of documents by the PCGG does not make such documents public documents per se under Rule 132 of the Rules of Court:

> The fact that these documents were collected by the PCGG in the course of its investigations does not make them per se public records referred to in the quoted rule.
>
> Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.
>
> Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[143] (Citations omitted)

Notably, the Sandiganbayan's evaluation of the evidence presented by petitioner was cursory. Its main reason for granting

---

[142] *Republic v. Marcos-Manotoc, et al.*, 681 Phil. 380 (2012) [Per *J.* Sereno (now *C.J.*), Second Division].

[143] *Id*. at 404-405.

the Motion to Dismiss on Demurrer to Evidence was that there was no evidence to consider due to petitioner's failure to file its Formal Offer of Evidence. It brushed off the totality of evidence on which petitioner built its case.

Even assuming that no documentary evidence was properly offered, this court finds it clear from the second assailed Resolution that the Sandiganbayan did not even consider other evidence presented by petitioner during the 19 years of trial. The Sandiganbayan erred in ignoring petitioner's testimonial evidence without any basis or justification. Numerous exhibits were offered as part of the testimonies of petitioner's witnesses.

Petitioner presented both testimonial and documentary evidence that tended to establish a presumption that respondents acquired ill-gotten wealth during respondent Fe Roa Gimenez's incumbency as public officer and which total amount or value was manifestly out of proportion to her and her husband's salaries and to their other lawful income or properties.

Petitioner presented five (5) witnesses, two (2) of which were Atty. Tereso Javier and Director Danilo R.V. Daniel, both from the PCGG:

> Petitioner presented as witnesses Atty. Tereso Javier, then Head of the Sequestered Assets Department of PCGG, and Danilo R.V. Daniel, then Director of the Research and Development Department of PCGG, who testified on the bank accounts and businesses owned and/ or under the control of spouses Gimenezes.[144]

Several exhibits excluded by the Sandiganbayan were offered as part of petitioner's testimonial evidence:

1) Exhibit "KK"[145] was offered "for the purpose of proving the assets or properties of the spouses Ignacio B. Gimenez and Fe Roa Gimenez, and as part of the testimony of Tereso Javier."[146]

---

[144] *Rollo*, p. 1726, Republic's Memorandum.

[145] *Id*. at 1757. Exhibit "KK" refers to the "Table of Contents of SB CC No. [0]007 entitled *RP vs. Ignacio/Fe Roa Dimnez* [sic], *et al*., including its Annexes[.]" (*Id*.)

[146] *Id*. at 1757.

2) Exhibits "KK-1" to "KK-12"[147] inclusive of sub-markings, were offered "for the purpose of proving the real properties

[147] *Id*. at 1023-1024, Formal Offer of Evidence. Exhibit "KK-1" refers to the "Certified true copy of Transfer Certificate of Title No. 137638 of the Registry of Deeds for the Province of Pangasinan registered under the name of Ignacio B. Gimenez, married to Fe Roa Gimenez, covering a parcel of land with an area of 1,106 square meters, [located in] Barrio Nibaleo, San Fabian, Pangasinan." Exhibit "KK-2" refers to a "Certified true copy of Tax Declaration No. 0634 under the name of Ignacio B. Gimenez married to Fe Roa Gimenez of the property covered by Transfer Certificate of Title No. 137638." Exhibit "KK-3" refers to the "Certified true copy of Transfer Certificate of Title No. 520192 of the Registry of Deeds for the Province of Rizal registered under the name of Ignacio B. Gimenez . . . married to Fe Roa Gimenez, covering a parcel of land with an area of 888 square meters [located in] Barrio Dolores, Taytay, Rizal." Exhibit "KK-4" refers to the "Certified true copy of Transfer Certificate of Title No. 138076 of the Registry of Deeds for the Province of Pangasinan registered under the name of Ignacio B. Gimenez . . . married to Fe Roa Gimenez, covering a parcel of land with an area of 1,106 square meters [located in] Barrio Nibaleo, San Fabian, Pangasinan." Exhibit "KK-5" refers to the "Certified true copy of Transfer Certificate of Title No. T-12869 of the Registry of Deeds for the Province of Quezon registered under the name of Spouses Ignacio B. Gimenez and Fe Roa Gimenez, covering a parcel of land with an area of 194,426 square meters [located in] Barrio Real (New Kiloloron), Real (formerly Infanta), Quezon." Exhibit "KK-5-A" refers to the "Bracketed portion at the dorsal page of Exhibit 'KK-5' which is the certification of the Deputy Register of Deeds stating that Exhibit 'KK-5' is a true copy of TCT No. T-12869, Book No. T-60, Page No. 169, registered in the name of Sps. Ignacio B. Gimenez and Fe Roa Gimenez[.]" Exhibit "KK-6" refers to the "Certified true copy of Tax Declaration No. 30-003-0131-A under the name of Ignacio B. Gimenez and Fe Roa Gimenez of the property covered by Transfer Certificate of Title No. T-12869." Exhibit "KK-7" refers to the "Certified true copy of Transfer Certificate of Title No. T-12142 of the Registry of Deeds for the Province of Quezon registered under the name of Ignacio Bautista Gimenez, married to Fe Roa Gimenez, covering a parcel of land with an area of 18.6738 hectares [located in] Barrio Capalong, Infanta, Quezon." Exhibit "KK-7-A" refers to the "Bracketed portion at the dorsal page of Exhibit 'KK-7', which is the certification of the Deputy Register of Deeds, stating that said Exhibit 'KK-7' is a true copy of TCT No. T-12142, Book No. T-57, Page No. 42[.]" Exhibit "KK-8" refers to the "Certified true copy of Tax Declaration No. 30-003-0301-A under the name of Ignacio Bautista Gimenez[.]" Exhibit "KK-9" refers to the "Certified true copy of Transfer Certificate of Title No. T-12870 of the Registry of Deeds for the Province of Quezon registered under the name of Spouses Ignacio B. Gimenez and Fe Roa Gimenez, covering a parcel of land with

acquired by the spouses Ignacio B. Gimenez and Fe Roa Gimenez, and as part of the testimony of Tereso Javier."[148]

3) Exhibits "KK-15," "KK-18," "KK-20," "KK-27," "KK-30," "KK-32" to "KK-38" and "KK-40"[149] were offered "for the

---

an area of 152,682 square meters, [located in] Barrio Kiloloron, Real (formerly Infanta), Quezon." Exhibit "KK-9-A" refers to the "Bracketed portion at the dorsal page of Exhibit 'KK-9' which is the certification of the Deputy Register of Deeds stating [that] said Exhibit 'KK-9' is a true copy of TCT No. T-12870, Book No. T-60, Page No. 170[.]" Exhibit "KK-10" refers to the "Certified true copy of Tax Declaration No. 30-005-0348-A under the name of Sps. Ignacio Jimenez and Fe Roa Jimenez of the property covered by Transfer Certificate of Title No. T-12870." Exhibit "KK-11" refers to the "Certified true copy of Transfer Certificate of Title No. T-13178 of the Registry of Deeds for the Province of Quezon registered under the name of Ignacio Bautista Gimenez married to Fe Roa Gimenez, covering a parcel of land with an area of 16.1641 hectares, situated in the Sitio of Capalong, Infanta, Quezon." Exhibit "KK-11-A" refers to the "Bracketed portion at the dorsal page of Exhibit 'KK-11' which is the certification of the Deputy Register of Deeds stating that Exhibit 'KK-11' is a true copy of TCT No. T-13178, Book No. T-62, Page No. 78[.]" Exhibit "KK-12" refers to the "Certified true copy of Tax Declaration No. 30-003-0302-A under the name of Ignacio Bautista Gimenez of the property located at Barrio Capalong, Real, Quezon with an area of 16.1541 hectares."

[148] *Id*. at 1758-1759, Republic's Memorandum.

[149] *Id*. at 1025-1026, Formal Offer of Evidence. Exhibit "KK-15" refers to the "Certified true copy of the General Information Sheet of Allied Banking Corporation for the year 2002 consisting of seven (7) pages." Exhibit "KK-18" refers to the "Certified true copy of the General Information Sheet of Allied Leasing and Finance Corporation for year 2002 consisting of seven (7) pages." Exhibit "KK-27" refers to the "Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of I.B. Gimenez Securities, Inc. (Formerly Ignacio B. Jimenez Securities, Inc., amending Article VII thereof) issued by the Securities and Exchange Commission on November 26, 1997, with the attached Amended Articles of Incorporation, consisting of nine (9) pages." Exhibit "KK-30" refers to the "Certified true copy of the General Information Sheet of Lepanto Consolidated Mining Company for the year 2001 consisting of seven (7) pages." Exhibit "KK-32" refers to the "Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Manila Stock Exchange (amending Article IV by shortening the term of its existence, thereby dissolving the corporation) issued by the Securities and Exchange Commission on December 9, 1999, with the attached Amended Articles of Incorporation

purpose of proving the corporations in which Ignacio B. Gimenez has interest, and as part of the testimony of Tereso Javier."[150]

4) Exhibit "KK-45"[151] was offered "for the purpose of proving that the PCGG conducted an investigation of New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio

---

consisting of eleven (11) pages." Exhibit "KK-33" refers to the "Certified true copy of the General Information Sheet of Marinduque Mining and Industrial Corporation for the year 1982 consisting of five (5) pages." Exhibit "KK-34" refers to the "Certified true copy of the Certificate of filing of Amended Articles of Incorporation of Marinduque Mining and Industrial Corporation[.]" Exhibit "KK-35" refers to the "Certified true copy of the General Information Sheet of Oriental Petroleum and Minerals Corporation for the year 2002 consisting of eight (8) pages." Exhibit "KK-36" refers to the "Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Oriental Petroleum and Minerals Corporation[.]" Exhibit "KK-37" refers to the "Certified true copy of the General Information Sheet of Philippine Overseas Telecommunications Corporation for the year 2003[.]" Exhibit "KK-38" refers to the "Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Philippine Overseas Telecommunications Corporation (amending Article II, Paragraph 5 of the Secondary Purposes of the Amended Articles of Incorporation thereof) issued by the Securities and Exchange Commission on June 9, 1972, with the attached Amended Articles of Incorporation, consisting of ten (10) pages." Exhibit "KK-40" refers to the "Certified true copy of the Cover Sheet of Certificate of Filing of Amended Articles of Incorporation of Prudential Guarantee and Assurance Incorporated consisting of twelve (12) pages, including the attached Certificate of Filing of Amended Articles of Incorporation dated October 24, 2000 and the Amended Articles of Incorporation.

[150] *Id*. at 1760, Republic's Memorandum.

[151] *Id*. at 1027, Formal Offer of Evidence. Exhibit "KK-45" refers to the "Certified true copy of the Memorandum dated August 1, 1988 of Atty. Ralph S. Lee, Team Supervisor, IRD, and Alexander M. Berces, Investigator, for Atty. Roberto S. Federis, Director, IRD, thru Atty. Romeo A. Damosos, Acting Asst. Director, IRD, all of the Presidential Commission on Good Government, consisting of seven (7) pages, regarding the investigation of New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio B. Gimenez and Roberto O. Olanday."

B. Gimenez and Roberto O. Olanday, and as part of the testimony of Tereso Javier."[152]

5) Exhibits "KK-48" to "KK-50"[153] were offered "for the purpose of proving that the PCGG formally filed notices of lis pendens with the Registers of Deeds of Taytay, Rizal, Lucena City, Quezon and San Fabian, Pangasinan over the properties mentioned in said notices in connection with Civil Case No. [0]007 pending with the Sandiganbayan, and as part of the testimony of Tereso Javier."[154]

6) Exhibits "KK-51" to "KK-52"[155] and their sub-markings were offered "for the purpose of proving that the PCGG sequestered the shares of stock in Allied Banking Corporation and Guaranteed

---

[152] *Id*. at 1761, Republic's Memorandum.

[153] *Id*. at 1028, Formal Offer of Evidence. Exhibit "KK-48" refers to the "Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of Taytay, Rizal] that the property covered by TCT No. 520192 . . . is deemed sequestered[.]" Exhibit "KK-49" refers to the "Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of Lucena City, Quezon] that the following properties [have been] sequestered[:] TCT No. 128969[,] TCT No. 12142[,] TCT No. 12870[,] and TCT No. 13178[.]" Exhibit "KK-50" refers to the "Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of San Fabian, Pangasinan] that the following properties are deemed sequestered and the subject of Civil Case No. [0]007 . . . : TCT No. 138076 (property located at Nibalew, San Fabian, Pangasinan), Beach House located in San Fabian, Pangasinan, and House with Property Index No. 013-31-018 located at Nibalew West, San Fabian, Pangasinan."

[154] *Id*. at 1762, Republic's Memorandum.

[155] *Id*. at 1028-1029, Formal Offer of Evidence. Exhibit "KK-51" refers to the "Certified true copy of a letter of sequestration dated June 19, 1986 of the Presidential Commission on Good Government . . . addressed to Mr. Lucio C. Tan, Chairman of Allied Banking Corporation regarding [the] sequestration of shares of stock in the . . . bank in the names of Lucio C. Tan, Iris Holdings & Dev. Corp., Mariano Tanenglian, Virgo Holdings & Dev. Corp., Ignacio B. Gimenez, and Jewel Holdings, Inc., consisting of two (2) pages." Exhibit "KK-51-A" refers to the "Bracketed portion of Exhibit '51' with the name of Ignacio B. Gimenez with 44,089 common

Education, Inc. as stated in the said writ/letter of sequestration, and as part of the testimony of Tereso Javier."[156]

7) Exhibits "NN" to "QQ"[157] and their sub-markings were offered "for the purpose of proving that the PCGG formally requested the Central Bank to freeze the bank accounts of the spouses Igancio [sic] B. Gimenez and Fe Roa Gimenez and that the Central Bank, acting on said request, issued a memorandum to all commercial banks relative thereto. They are also being offered as part of the testimony of Tereso Javier."[158]

8) Exhibits "RR" to "RR-23"[159] were offered "for the purpose of proving that Dominador Pangilinan, former Acting President

---

shares . . . listed." Exhibit "KK-52" refers to the "Certified true copy of Writ of Sequestration . . . regarding the sequestration of the shares of stock of Roberto O. Olanday, Ignacio B. Gimenez, Aracely Olanday, Oscar Agcaoili and Grid Investments, Inc." Exhibit "KK-52-A" refers to the "Bracketed portion on Exhibit "52" of the name of Ignacio B. Gimenez."

[156] *Id*. at 1763, Republic's Memorandum.

[157] *Id*. at 1029, Formal Offer of Evidence. Exhibit "NN" refers to the "Certified xerox copy of a Memorandum To All Commercial Banks dated March 14, 1986 issued by [the] Governor of the Central Bank of the Philippines, regarding the letter dated March 13, 1986 of Mary Concepcion Bautista, Commissioner of [PCGG]. " Exhibit "OO" refers to the "Certified xerox copy of a letter dated March 13, 1986 of Mary Concepcion Bautista, [PCGG Commissioner], regarding [the] names to be added to the [list of persons not allowed to make] any withdrawal or transfer of funds from the deposit accounts, trust accounts, and/or money market placements under the names of said persons without written authority from the PCGG[.]" Exhibit "PP" refers to the same exhibit as 'OO'; Exhibit "PP-1" refers to the "Bracketed portion on Exhibit 'PP' of the names of Ignacio Gimenez and Fe Jimenez [sic] appearing as No. 14 in the list of names." Exhibit "QQ" is the "Same as Exhibit 'NN'." Exhibit "QQ-1" refers to the "Bracketed portion on Exhibit 'QQ' of the names of Ignacio Jimenez [sic] and Fe Jimenez [sic] appearing as No. 14 in the list of names."

[158] *Id*. at 1763, Republic's Memorandum.

[159] *Id*. at 1029-1030, Formal Offer of Evidence. Exhibit "RR" refers to the "Photocopy of Affidavit dated July 24, 1987 of Dominador Pangilinan, Former Acting President and President of Traders Royal Bank, consisting of twenty-two (22) pages[.]" Exhibits "RR-1" to "RR-3" refer to pages 2-4 of Pangilinan's Affidavit. Exhibit "RR-4" refers to Annex A of Pangilinan's

and President of Traders Royal Bank, executed an affidavit on July 24, 1987 wherein he mentioned Malacanang trust accounts maintained with the Traders Royal Bank the balance of which was very high, approximately 150-175 million pesos, as indicated in the monthly statements attached to his affidavit. They are also being offered as part of the testimony of Danilo R.V. Daniel."[160]

9) Exhibits "SS" to "SS-29"[161] were offered "for the purpose of proving that Apolinario K. Medina, Executive Vice President

---

Affidavit. Exhibits "RR-5" to "RR-7" refer to the "Status of Bankers Acceptances dated July 30, 1978 [regarding] A/C # 20, consisting of three (3) pages, attached to [Pangilinan's affidavit.]" Exhibit "RR-8" refers to the "Recapitulation as of February 28, 1982 attached to [Pangilinan's affidavit.]" Exhibits "RR-9" to "RR-20" refer to the "Status of Funds of A/C # 128 as of June 4, 1979, consisting of twelve (12) pages, attached to [Pangilinan's affidavit.]" Exhibit "RR-21" refers to "Annex 'B' of [Pangilinan's affidavit], which is the Savings Account Ledger of Account No. 50100060-6 at Traders Royal Bank." Exhibit "RR-22" refers to paragraph 1 of Pangilinan's affidavit. Exhibit "RR-23" refers to the "First sentences of paragraph 4 of [Pangilinan's affidavit], which reads: 'In about 1977 or 1978, Mr. Rivera told me that funds were being given to him by Ms. Fe Gimenez for deposit into trust accounts maintained with TRB.'"

[160] *Id*. at 1764, Republic's Memorandum.

[161] *Id*. at 1030-1032, Formal Offer of Evidence. Exhibit "SS" refers to the "Photocopy of the Affidavit dated July 23, 1987 of Apolinario K. Medina, Executive Vice-President of Traders Royal Bank, consisting of twenty-nine (29) pages including the annexes." Exhibits "SS-1" to "SS-3" refer to pages 2-4 of Medina's affidavit. Exhibit "SS-4" refers to Annex "A" of Medina's affidavit. Exhibits "SS-6" to "SS-8" refer to the "Status of Bankers Acceptances dated July 30, 1978 re A/C # 20[.]" Exhibit "SS-9" refers to the "Recapitulation as of February 28, 1982 attached to [Medina's affidavit.]" Exhibits "SS-10" to "SS-21" refer to the "Status of Funds re A/C # 128 as of June 4, 1979[.]" Exhibit "SS-22" refers to Annex "B" of Medina's Affidavit which pertains to the message of Traders Royal Bank to California Overseas Bank, Los Angeles dated September 28, 1981. Exhibit "SS-23" refers to Annex "C" of Medina's affidavit which pertains to the message of Traders Royal Bank Manila to Chemical Bank, New York dated September 28, 1981. Exhibit "SS-24" refers to Annex "D" of Medina's affidavit which pertains to the message of Traders Royal Bank Manila to Bankers Trust Co., New York dated September 28, 1981. Exhibit "SS-25" refers to Annex "E" of Medina's affidavit which pertains to the message of Traders Royal

of Traders Royal Bank, executed an Affidavit on July 23, 1987 wherein he mentioned about certain numbered (confidential) trust accounts maintained with the Traders Royal Bank, the deposits to which 'were so substantial in amount that (he) suspected that they had been made by President Marcos or his family. They are also being offered as part of the testimony of Danilo R.V. Daniel."[162]

10) Exhibits "TT" to "TT-3"[163] were offered "for the purpose of proving that Director Danilo R.V. Daniel of the Research and Development Department of the PCGG conducted an investigation on the ill-gotten wealth of the spouses Ignacio and Fe Roa Gimenez and found that from 1977 to 1982, the total sum of ₱75,090,306.42 was withdrawn from the account No. 128 (A/C 76-128) in favor of I.B Gimenez, I.B. Gimenez Securities and Fe Roa Gimenez. They are also being offered as part of the testimony of Director Danilo R.V. Daniel."[164]

The court cannot arbitrarily disregard evidence especially when resolving a demurrer to evidence which tests the sufficiency of the plaintiff's evidence.

---

Bank Manila to Irving Trust Company New York dated September 28, 1981. Exhibit "SS-26" refers to Annex "F" of Medina's affidavit which pertains to the message of Traders Royal Bank Manila to California Overseas Bank, Los Angeles dated September 28, 1981. Exhibit "SS-27" refers to Annex "G" of Medina's affidavit which pertains to the message of Traders Royal Bank Manila to California Overseas Bank Los Angeles dated September 28, 1981. Exhibit "SS-28" refers to Annex "H" of Medina's affidavit which pertains to the message of Traders Royal Bank to Irving Trust Company, New York dated February 16, 1982. Exhibit "SS-29" refers to the attachment to Medina's affidavit which pertains to the message of Traders Royal Bank Manila to Irving Trust Company, New York dated January 12, 1982.

[162] *Id*. at 1766, Republic's Memorandum.

[163] *Id*. at 1032, Formal Offer of Evidence. Exhibit "TT" refers to the "Memorandum dated July 19, 2005 for Atty. Plutarco B. Bawagan, Jr. from Director Danilo R.V. Daniel, Research & Development Department of the [PCGG] regarding the investigation conducted on the ill-gotten wealth of spouses Ignacio and Fe Roa Gimenez[.]" Exhibits "TT-1" to "TT-3" refer to pages 2-4 of Mr. Daniel's Memorandum.

[164] *Id*. at 1766, Republic's Memorandum.

The difference between the admissibility of evidence and the determination of its probative weight is canonical.[165]

Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to [be] considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue. Thus, a letter may be offered in evidence and admitted as such but its evidentiary weight depends upon the observance of the rules on evidence. Accordingly, the author of the letter should be presented as witness to provide the other party to the litigation the opportunity to question him on the contents of the letter. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect. As earlier stated, hearsay evidence, whether objected to or not, has no probative value.[166] (Citations omitted)

The Sandiganbayan should have considered *Atienza v. Board of Medicine, et al.*[167] where this court held that it is better to admit and consider evidence for determination of its probative value than to outright reject it based on very rigid and technical grounds.[168]

Although trial courts are enjoined to observe strict enforcement of the rules of evidence, in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that:

> *[I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their*

---

[165] *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59 (1998) [Per *J*. Romero, Third Division]. *See Heirs of Lourdes Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003) [Per *J*. Panganiban, Third Division]; RULES OF COURT, Rule 128, Sec. 3 provides:

SEC. 3. Admissibility of evidence.— Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

[166] *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59-60 (1998) [Per *J*. Romero, Third Division].

[167] 657 Phil. 536 (2011) [Per *J*. Nachura, Second Division].

[168] *Id*. at 542.

> *rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.*[169] (Emphasis supplied, citations omitted)

A liberal application of the Rules is in line with the state's policy to recover ill-gotten wealth. In case of doubt, courts should proceed with caution in granting a motion to dismiss based on demurrer to evidence. An order granting demurrer to evidence is a judgment on the merits.[170] This is because while a demurrer "is an aid or instrument for the expeditious termination of an action,"[171] it specifically "pertains to the merits of the case."[172]

In *Cabreza, Jr., et al. v. Cabreza*,[173] this court defined a judgment rendered on the merits:

> A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."[174] (Citations omitted)

---

[169] *Id*.

[170] *See Nepomuceno, et al. v. Commission on Elections, et al.*, 211 Phil. 623, 628 (1983) [Per *J*. Escolin, *En Banc*], *Oropesa v. Oropesa*, G.R. No. 184528, April 25, 2012, 671 SCRA 174, 185 [Per *J*. Leonardo-De Castro, First Division], and *Casent Realty Development Corporation v. Philbanking Corporation*, 559 Phil. 793, 801-802 (2007) [Per *J*. Velasco, Jr., Second Division].

[171] *Nepomuceno, et al. v. Commission on Elections, et al.*, 211 Phil. 623, 628 (1983) [Per *J*. Escolin, *En Banc*].

[172] *Philippine Amusement and Gaming Corporation v. Court of Appeals*, 341 Phil. 432, 440 (1997) [Per *J*. Francisco, Third Division].

[173] 679 Phil. 30 (2012) [Per *J*. Sereno (now *C.J.*), Second Division].

[174] *Id*. at 41-42. In *Lu Ym v. Nabua*, 492 Phil. 397, 404 (2005) [Per *J*. Tinga, Second Division], "an interlocutory order . . . neither terminates

To reiterate, "[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought."[175] The order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits:

> As it is settled that an order dismissing a case for insufficient evidence is a judgment on the merits, it is imperative that it be a reasoned decision clearly and distinctly stating therein the facts and the law on which it is based.[176] (Citation omitted)

To erroneously grant a dismissal simply based on the delay to formally offer documentary evidence essentially deprives one party of due process.

IV

Respondents did not fail to specifically deny material averments in the Complaint.

Under Rule 8, Section 10 of the Rules of Court, the "defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial."[177] There are three modes of specific denial provided for under the Rules:

---

nor finally disposes of a case[;] it [still] leaves something to be done [on the part of] the court before the case is finally decided on the merits."

[175] *Uy v. Chua*, 616 Phil. 768, 783-784 (2009) [Per *J.* Chico-Nazario, Third Division].

[176] *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, February 11, 1992, 206 SCRA 127, 133 [Per *J.* Cruz, First Division].

[177] RULES OF COURT, Rule 8, Sec. 10 provides:

> SEC. 10. Specific denial.— A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and

1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.[178]

In paragraph 14 of the Complaint, the PCGG, through the Office of the Solicitor General, averred that:

14. Defendant Fe Roa Gimenez, by herself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of her position, influence and connection and with grave abuse of power and authority, in order to prevent disclosure and recovery of assets illegally obtained:

(a) actively participated in the unlawful transfer of millions of dollars of government funds into several accounts in her name in foreign countries;

(b) disbursed such funds from her various personal accounts for Defendants' own use[,] benefit and enrichment;

(c) acted as conduit of the Defendants Ferdinand E. Marcos and Imelda R. Marcos in purchasing the New York properties, particularly, the Crown Building, Herald Center, 40 Wall Street, 200 Wall Street, Lindenmere Estate and expensive works of arts;[179]

In their Answer, respondents claimed that;

9. Defendants Spouses Gimenez and Fe Roa specifically deny the allegations contained in paragraphs 14(a), 14(b) and 14(c), the truth being that defendant Fe Roa never took advantage of her position or

---

shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made to the complaint, he shall so state, and this shall have the effect of a denial.

[178] *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 57 (2011) [Per *J.* Mendoza, Second Division].

[179] *Rollo*, p. 147, Complaint.

alleged connection and influence to allegedly prevent disclosure and recovery of alleged illegally obtained assets, in the manner alleged in said paragraphs.[180]

Similarly, the PCGG made material allegations in paragraph 16 of the Complaint:

16. Defendant Ignacio B. Gimenez, taking undue advantage of his relationship, influence, and connection, by himself and/or in unlawful concert and active collaboration with Defendants Ferdinand E. Marcos and Imelda R. Marcos, for the purpose of mutually enriching themselves and preventing the disclosure and recovery of assets illegally obtained, among others:

(a) acted as the dummy, nominee or agent of Defendants Ferdinand E. Marcos and Imelda R. Marcos, in several corporations such as, the Allied Banking Corporation, Acoje Mining Corporation, Baguio Gold Mining, Multi National Resources, Philippine Overseas, Inc. and Pioneer Natural Resources;

(b) unlawfully obtained, through corporations organized by them such as the the [sic] New City Builders, Inc. (NCBI), multimillion peso contracts with the government for the construction of government buildings, such as the University of Life Sports Complex and Dining Hall as well as projects of the National Manpower Corporation, Human Settlements, GSIS, and Maharlika Livelihood, to the gross and manifest disadvantage to Plaintiff and the Filipino people.

(c) in furtherance of the above stated illegal purposes, organized several establishments engaged in food, mining and other businesses such as the Transnational Construction Corporation, Total Systems Technology, Inc., Pyro Control Technology Corporation, Asian Alliance, Inc., A & T Development Corporation, RBO Agro Forestry Farm Development Corporation, Bathala Coal Mining Corporation, Coal Basis Mining Corporation, Titan Coal Mining Corporation, GEI Guaranteed Education, Inc., and I.B. Gimenez Securities, Inc.[181]

---

[180] *Id*. at 168, Answer.

[181] *Id*. at 149-151, Complaint.

To which respondents specifically denied through the following paragraph:

> 11. Defendants Spouses Gimenez and Fe Roa specifically deny the allegations contained in paragraphs 16, 16(a), 16(b) and 16(c) that defendant Gimenez allegedly took advantage of his alleged relationship, influence and connection, and that by himself or in alleged unlawful concert with defendants Marcos and Imelda, for the alleged purpose of enriching themselves and preventing the discovery of alleged illegally obtained assets: (1) allegedly acted as dummy, nominee or agent of defendants Marcos and Imelda; (2) allegedly obtained multi-million peso projects unlawfully; and (3) allegedly organized several establishments, the truth being: (1) that defendant Gimenez never acted as dummy, nominee or agent of defendants Marcos and Imelda; (2) that defendant Gimen[e]z never once obtained any contract unlawfully; and (3) that defendant Gimenez is a legitimate businessman and organized business establishments legally and as he saw fit, all in accordance with his own plans and for his own purposes.[182]

In *Aquintey v. Spouses Tibong*,[183] this court held that using "specifically" in a general denial does not automatically convert that general denial to a specific one.[184] The denial in the answer must be so definite as to what is admitted and what is denied:

> A denial is not made specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word "specifically." When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are plainly and necessarily within the defendant's knowledge, an alleged "ignorance or lack of information" will not be considered as a specific denial. Section 11, Rule 8 of the Rules also provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied. *Thus, the answer should be so definite and certain in its allegations that the pleader's adversary should not be left in doubt as to what is admitted, what is denied, and what*

---

[182] *Id*. at 168-169, Answer.

[183] 540 Phil. 422 (2006) [Per *J*. Callejo, Sr., First Division].

[184] *Id*. at 441.

*is covered by denials of knowledge as sufficient to form a belief.*[185] (Emphasis supplied, citations omitted)

However, the allegations in the pleadings "must be contextualized and interpreted in relation to the rest of the statements in the pleading."[186] The denials in respondents' Answer comply with the modes provided for under the Rules. We have held that the purpose of requiring specific denials from the defendant is to make the defendant disclose the "matters alleged in the complaint which he [or she] succinctly intends to disprove at the trial, together with the matter which he [or she] relied upon to support the denial."[187] The denials proffered by respondents sufficiently disclosed the matters they wished to disprove and those they would rely upon in making their denials.

To summarize, the Sandiganbayan erred in granting the Motion to Dismiss on demurrer to evidence. It erred in making a sweeping declaration on the probative value of the documentary evidence offered by petitioner and in excluding other evidence offered during trial without full evaluation based on reasons grounded in law and/or jurisprudence.

V

The third part of Rule 33, Section 1 of the Rules of Court provides that "[i]f the motion [to dismiss] is granted but on appeal the order of dismissal is reversed [the movant] shall be deemed to have waived the right to present evidence." As this court held:

> [I]f a demurrer to evidence is granted but on appeal the order of dismissal is reversed, the movant shall be deemed to have waived the right to present evidence. The movant who presents a demurrer to the plaintiff's evidence retains the right to present their own evidence, if the trial court disagrees with them; if the trial court agrees with

---

[185] *Id*.

[186] *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 58 (2011) [Per *J*. Mendoza, Second Division].

[187] *Philippine National Bank v. Court of Appeals*, 464 Phil. 331, 339 (2004) [Per *J*. Callejo, Sr., Second Division].

them, but on appeal, the appellate court disagrees with both of them and reverses the dismissal order, the defendants lose the right to present their own evidence. The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage prolonged litigations.[188] (Citations omitted)

This procedure, however, does not apply.

In this case, we principally nullify the assailed Resolutions that denied the admission of the Formal Offer of Evidence. It only follows that the Order granting demurrer should be denied. This is not the situation contemplated in Rule 33, Section 1.[189] Respondents were not able to even comment on the Formal Offer of Evidence. Due process now requires that we remand the case to the Sandiganbayan. Respondents may, at their option and through proper motion, submit their Comment. The Sandiganbayan should then rule on the admissibility of the documentary and object evidence covered by the Formal Offer submitted by petitioner. Respondents then may avail themselves of any remedy thereafter allowed by the Rules.

**WHEREFORE**, the Petition is **GRANTED**. The assailed Resolutions dated May 25, 2006 and September 13, 2006 of the Sandiganbayan Fourth Division in Civil Case No. 0007 are **REVERSED** and **SET ASIDE**. The case is remanded to the Sandiganbayan for further proceedings with due and deliberate dispatch in accordance with this Decision.

**SO ORDERED.**

*Carpio (Chairperson), Bersamin, del Castillo,* and *Mendoza, JJ.,* concur.

---

[188] *Permanent Savings and Loan Bank v. Velarde*, 482 Phil. 193, 206-207 (2004) [Per *J*. Austria-Martinez, Second Division]. *See Quebral v. Court of Appeals*, 322 Phil. 387, 405-406 (1996) [Per *J*. Panganiban, Third Division].

[189] RULES OF COURT, Rule 33, Sec. 1 provides:

SECTION 1. Demurrer to evidence.— After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

**FIRST DIVISION**

[G.R. No. 178501. January 11, 2016]

**NILO S. RODRIGUEZ, FRANCISCO T. ALISANGCO, BENJAMIN T. ANG, VICENTE P. ANG, SILVESTRE D. ARROYO, RUDERICO C. BAQUIRAN, WILFREDO S. CRUZ, EDMUNDO M. DELOS REYES, JR., VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, LIBERATO D. GUTIZA, GLADYS L. JADIE, LUISITO M. JOSE, PATERNO C. LABUGA, JR., NOEL Y. LASTIMOSO, DANILO C. MATIAS, BEN T. MATURAN, VIRGILIO N. OCHARAN, GABRIEL P. PIAMONTE, JR., ARTURO A. SABADO, MANUEL P. SANCHEZ, MARGOT A. CORPUS as the surviving spouse of the deceased ARNOLD S. CORPUS, and ESTHER VICTORIA A. ALCAÑESES, as the surviving spouse of the deceased EFREN S. ALCAÑESES,** *petitioners, vs.* **PHILIPPINE AIRLINES, INC., and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

[G.R. No. 178510. January 11, 2016]

**PHILIPPINE AIRLINES, INC.,** *petitioner, vs.* **NILO S. RODRIGUEZ, FRANCISCO T. ALISANGCO, BENJAMIN T. ANG, VICENTE P. ANG, SILVESTRE D. ARROYO, RUDERICO C. BAQUIRAN, ARNOLD S. CORPUS, WILFREDO S. CRUZ, EDMUNDO M. DELOS REYES, JR., VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, LIBERATO D. GUTIZA, GLADYS L. JADIE, LUISITO M. JOSE, PATERNO C. LABUGA, JR., NOEL Y. LASTIMOSO, DANILO C. MATIAS, BEN T. MATURAN, VIRGILIO N. OCHARAN, GABRIEL M. PIAMONTE, JR., RODOLFO O. POE, JR., ARTURO A. SABADO, MANUEL P. SANCHEZ, and ESTHER VICTORIA A.**

**ALCAÑESES, as the Sole Heir of the Deceased EFREN S. ALCAÑESES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; ACTIONS; JUDGMENT; ANY OMISSION INCURRED IN THE DISPOSITIVE PORTION OF THE DECISION CANNOT PREVENT AN EFFECTIVE EXECUTION THEREOF; RATIONALE.—** Settled in law is that once a decision has acquired finality, it becomes immutable and unalterable, thus can no longer be modified in any respect. Subject to certain recognized exceptions, the principle of immutability leaves the judgment undisturbed as "nothing further can be done except to execute it." True, the dispositive portion of the DOLE Resolution does not specifically enumerate the names of those who actually participated in the strike but only mentions that those strikers who failed to heed the return-to-work order are deemed to have lost their employment. This omission, however, cannot prevent an effective execution of the decision. As was held in *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, any ambiguity may be clarified by reference primarily to the body of the decision or supplementary to the pleadings previously filed in the case. In any case, especially when there is an ambiguity, "a judgment shall be read in connection with the entire record and construed accordingly."

**2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* A PROCEEDING MAY NOT BE REOPENED UPON GROUNDS ALREADY AVAILABLE TO THE PARTIES DURING THE PENDENCY OF SUCH PROCEEDINGS, OTHERWISE, IT MAY GIVE WAY TO VICIOUS AND VEXATIOUS PROCEEDINGS; APPLICATION IN CASE AT BAR.— It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings. ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process. Relevant to mention at this point is that when NCMB NCR NS 12-514-97 (strike/illegal lockout case) was still pending, several complaints for illegal dismissal were filed before the Labor Arbiters of the NLRC by individual**

**members of ALPAP, questioning their termination following the strike staged in June 1998. PAL likewise manifests that there is a pending case involving a complaint for the recovery of accrued and earned benefits belonging to ALPAP members. Nonetheless, the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment.** x x x The *1st and 2nd ALPAP cases* which became final and executory on August 29, 2002 and September 9, 2011, respectively, constitute *res judicata* on the issue of who participated in the illegal strike in June 1998 and whose services were validly terminated.

**3. ID.; ACTIONS; JUDGMENT; DOCTRINE OF *RES JUDICATA*; CONSTRUED.—** *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

**4. ID.; ID.; ID.; ID.; TWO MAIN RULES OF THE DOCTRINE, ELUCIDATED.—** The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In

> speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment".

**APPEARANCES OF COUNSEL**

*Sobreviñas Hayudini Navarro & San Juan* for Nilo Rodriguez, et al.

*Danjun G. Lucas & Andrea Monica V. Gonzales* for Philippine Airlines, Inc.

**D E C I S I O N**

**LEONARDO-DE CASTRO, *J.*:**

Before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated November 30, 2006 and Resolution dated June 8, 2007 of the Court of Appeals in CA-G.R. SP No. 71190.

The petitioners in G.R. No. 178501 are 24 former pilots of Philippine Airlines, Inc. (PAL), namely, Nilo S. Rodriguez (Rodriguez), Francisco T. Alisangco (Alisangco), Benjamin T. Ang, Vicente P. Ang, Silvestre D. Arroyo (Arroyo), Ruderico C. Baquiran (Baquiran), Wilfredo S. Cruz, Edmundo M. Delos Reyes, Jr. (Delos Reyes), Virgilio V. Ecarma (Ecarma), Ismael F. Galisim (Galisim), Tito F. Garcia (Garcia), Liberato D. Gutiza (Gutiza), Gladys L. Jadie (Jadie), Luisito M. Jose (Jose), Paterno C. Labuga, Jr. (Labuga), Noel Y. Lastimoso (Lastimoso), Danilo C. Matias (Matias), Ben T. Maturan (Maturan), Virgilio N. Ocharan (Ocharan), Gabriel M. Piamonte, Jr. (Piamonte), Arturo A. Sabado (Sabado), Manuel P. Sanchez (Sanchez), Margot A.

---

[1] *Rollo* (G.R. No. 178501), pp. 80-110 and *rollo* (G.R. No. 178510), pp. 68-98; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Rodrigo V. Cosico and Celia C. Librea-Leagogo, concurring.

Corpus as the surviving spouse of the deceased Arnold S. Corpus (Corpus), and Esther Victoria A. Alcañeses as the surviving spouse of the deceased Efren S. Alcañeses (Alcañeses), hereinafter collectively referred to as Rodriguez, *et al.,* deemed by PAL to have lost their employment status for taking part in the illegal strike in June 1998.

The petitioner in G.R. No. 178510 is PAL, a domestic corporation organized and existing under the laws of the Republic of the Philippines, operating as a common carrier transporting passengers and cargo through aircraft. PAL named Rodriguez, *et al.* and Rodolfo O. Poe (Poe) as respondents in its Petition.

In its assailed Decision, the Court of Appeals: (1) reversed the Decision dated November 6, 2001 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 027348-01 which declared the loss of employment of Rodriguez, *et al.*(except for Jadie) to be in accordance with law; and (2) reinstated the Decision dated December 11, 2000 of the Labor Arbiter in NLRC NCR Case No. 00-06-06290-99 which held PAL liable for the illegal dismissal of Rodriguez, *et al.* but with the modifications directing PAL to pay the pilots their separation pay in lieu of reinstatement and deleting the awards for moral and exemplary damages and attorney's fees.

Rodriguez, *et al.,* pray that the Court partially reverse the judgment of the Court of Appeals by ordering their reinstatement with backwages and restoring the awards for moral and exemplary damages and attorney's fees; while PAL petitions that the same judgment be completely annulled and set aside.

The relevant facts of the case are as follows:

On December 9, 1997, the Airline Pilots Association of the Philippines (ALPAP) filed with the National Conciliation and Mediation Board (NCMB) a Notice of Strike, docketed as NCMB NCR NS 12-514-97 (Strike Case), on the grounds of unfair labor practice and union-busting by PAL.[2]

---

[2] *Rollo* (G.R. No. 178510), p. 177.

By virtue of the authority vested upon him under Article 263(g)[3] of the Labor Code of the Philippines (Labor Code), the Secretary[4] of the Department of Labor and Employment (DOLE) assumed jurisdiction over the Strike Case, and issued an Order[5] on December 23, 1997 prohibiting all actual and impending strikes and lockouts. On May 25, 1998, the DOLE Secretary issued another Order[6] reiterating the prohibition against strikes and lockouts.

Despite the abovementioned Orders of the DOLE Secretary, ALPAP filed a second Notice of Strike on June 5, 1998 and staged a strike on the same day at around 5:30 in the afternoon. The DOLE Secretary immediately called PAL and ALPAP for conciliation conferences on June 6 and 7, 1998 to amicably settle the dispute between them.[7] After his efforts failed, the DOLE Secretary issued an Order[8] on June 7, 1998 (Return-to-Work Order) with the following directive:

---

[3] Art. 263. Strikes, picketing, and lockouts. x x x (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

[4] Leonardo A. Quisumbing.

[5] *Rollo* (G.R. No. 178510), pp. 152-154.

[6] *Id*. at 159-160. Issued by former DOLE Secretary Cresenciano B. Trajano.

[7] *Id*. at 178.

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

WHEREFORE, FOEGOING PREMISES CONSIDERED, all striking officers and members of ALPAP are hereby ordered to return to work within twenty-four (24) hours from receipt of this Order and for PAL management to accept them under the same terms and conditions of employment prior to the strike.

Our directive to both parties to cease and desist from committing any and all acts that will exacerbate the situation is hereby reiterated.[9]

On June 26, 1998, the members of ALPAP reported for work but PAL did not accept them on the ground that the 24-hour period for the strikers to return set by the DOLE Secretary in his Return-to-Work Order had already lapsed, resulting in the forfeiture of their employment.

Consequently, ALPAP filed with the NLRC on June 29, 1998 a Complaint[10] for illegal lockout against PAL, docketed as NLRC NCR Case No. 00-06-05253-98 (Illegal Lockout Case). ALPAP averred that after its counsel received the Return-to-Work Order on June 25, 1998, its members reported back to work on June 26, 1998 in compliance with the 24-hour period set in the said Order. ALPAP prayed that PAL be ordered to unconditionally accept its members back to work and pay the salaries and other benefits due them. On August 21, 1998, the Acting Executive Labor Arbiter ordered the consolidation of the Illegal Lockout Case with the Strike Case pending before the DOLE Secretary.[11]

The DOLE Secretary[12] issued a Resolution[13] on June 1, 1999 in the consolidated Strike and Illegal Lockout Cases, with a dispositive portion that reads:

---

[9] *Id*. at 176.

[10] *Id*. at 209-212.

[11] *Id*. at 213-218. Order dated August 21, 1998. The Order was affirmed by the NLRC in a Resolution dated January 18, 1999 (*id*. at 219-231). ALPAP filed an Urgent Petition for Injunction to prevent the consolidation but it was denied by the NLRC in a Resolution dated August 26, 1998 (*id*. at 236-254). The NLRC Resolution was later affirmed by the Supreme Court in a Resolution dated September 21, 1998 (*id*. at 255-257).

[12] Bienvenido E. Laguesma.

[13] *Rollo* (G.R. No. 178510), pp. 258-264.

**WHEREFORE, PREMISES CONSIDERED**, this Office hereby:

x x x x

b. DECLARES the strike conducted by ALPAP on June 5, 1998 and thereafter illegal for being procedurally infirm and in open defiance of the return-to-work order of June 7, 1998 and consequently, the strikers are deemed to have lost their employment status; and

c. DISMISSES the complaint for illegal lockout for lack of merit.[14]

ALPAP filed a Motion for Reconsideration but it was denied by the DOLE Secretary in a Resolution dated July 23, 1999.[15]

ALPAP assailed the foregoing Resolutions dated June 1, 1999 and July 23, 1999 of the DOLE Secretary in the consolidated Strike and Illegal Lockout Cases in a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court filed before the Court of Appeals and docketed as CA-G.R. SP No. 54880. The appellate court dismissed said Petition in a Decision[16] dated August 22, 2001. ALPAP elevated the case to this Court by filing a Petition for *Certiorari,* bearing the title *"Airline Pilots Association of the Philippines v. Philippine Airlines, Inc."* docketed as G.R. No. 152306 (*1st ALPAP case).* The Court dismissed the Petition of ALPAP in a minute Resolution[17] dated April 10, 2002 for failure of ALPAP to show grave abuse of discretion on the part of the appellate court. Said Resolution dismissing the *1st ALPAP case* became final and executory on August 29, 2002.[18]

Meanwhile, 32 ALPAP members, consisting of Rodriguez, *et al.,* Poe, Nino B. Dela Cruz (Dela Cruz), Baltazar B. Musong (Musong), Elmer F. Peña (Peña), Cesar G. Cruz, Antonio O. Noble, Jr. (Noble), Nicomen H. Versoza, Jr. (Versoza), and

---

[14] *Id*. at 264.

[15] *Id*. at 265-267.

[16] *Id*. at 269-283.

[17] *Id*. at 285.

[18] *Id*. at 287. Entry of Judgment.

Ryan Jose C. Hinayon (Hinayon), hereinafter collectively referred to as complainants — with varying ranks of captain, first officer, and second officer[19] — filed with the NLRC on June 7, 1999 a Complaint[20] for illegal dismissal against PAL, docketed as NLRC-NCR Case No. 00-06-06290-99 (Illegal Dismissal Case). The Complaint stated three causes of action, to wit:

**CAUSES OF ACTION**

A. **ILLEGAL DISMISSAL** in that [PAL] terminated the employment of the above-named complainants on 7 June 1998 (except for complainant Liberato D. Gutiza, who was dismissed on 6 June 1998) for their alleged participation in a strike staged by ALPAP at the Philippine Airlines, Inc. commencing on 5 June 1998 when in truth and in fact:

> (i) Complainants EFREN S. ALCAÑESES, VICENTE P. ANG, BENJAMIN T. ANG, SILVESTRE D. ARROYO, LIBERATO D. GUTIZA, LUISITO M. JOSE, DANILO C. MATIAS, GABRIEL M. PIAMONTE, JR., MANUEL P. SANCHEZ, and NICOMEN H. VERSOZA, JR. **actually reported for work and duly discharged all their duties and responsibilities as pilots by flying their assigned equipment and completing their respective flights to their specified destinations, as scheduled;**
>
> **(ii) Complainants GLADYS L. JADIE and BEN T. MATURAN, having been on duly approved and scheduled medical leaves**, were authorized and permitted to absent themselves from work on 5 June 1998 up to the termination of their employment on 7 June 1998, complainant JADIE

---

[19] The 21 captains are: Nilo S. Rodriguez, Efren S. Alcañeses, Francisco T. Alisangco, Benjamin T. Ang, Ruderico C. Baquiran, Arnold S. Corpus, Nino B. Dela Cruz, Virgilio V. Ecarma, lsmael F. Galisim, Tito F. Garcia, Gladys L. Jadie, Paterno C. Labuga, Jr., Noel Y. Lastimoso, Danilo C. Matias, Ben T. Maturan, Baltazar B. Musong, Virgilio N. Ocharan, Elmer F. Peña, Rodolfo O. Poe, Arturo A. Sabado and Manuel P. Sanchez. The nine first officers are: Vicente P. Ang, Silvestre D. Arroyo, Cesar G. Cruz, Wilfredo S. Cruz, Edmundo M. delos Reyes, Jr., Liberato D. Gutiza, Luisito M. Jose, Antonio O. Noble, Jr. and Nicomen H. Versoza, Jr.; and the two second officers are: Ryan Jose C. Hinayon and Gabriel M. Piamonte, Jr.

[20] CA *rollo,* pp. 122-133.

being then on maternity leave and grounded as she was already in her ninth month of pregnancy, while complainant MATURAN was recuperating from a laparotomy and similarly medically grounded until 15 June 1998;

(iii) Complainants EDMUNDO M. DELOS REYES, JR., BALTAZAR B. MUSONG, ANTONIO O. NOBLE, JR., ELMER F. PEÑA, and ARTURO A. SABADO were not required to work and were legally excused from work on 5 June 1998 up to the termination of their employment on 7 June 1998 as they were on their annual vacation leaves as approved and pre-scheduled by [PAL] as early as December 1997 conformably with Company policy and practice on vacation leave scheduling;

(iv) Complainants NILO S. RODRIGUEZ, RUDERICO C. BAQUIRAN, ARNOLD S. CORPUS, CESAR G. CRUZ, WILFREDO S. CRUZ, NINO B. DELA CRUZ, VIRGILIO V. ECARMA, ISMAEL F. GALISIM, TITO F. GARCIA, RYAN JOSE C. HINAYON, PATERNO C. LABUGA, JR., NOEL Y. LASTIMOSO, RODOLFO O. POE and VIRGILIO N. OCHARAN were likewise not required to work and were legally excused from work on 5 June 1998 up to the termination of their employment on 7 June 1998 as they were **off duty and did not have any scheduled flights** based on the June 1998 monthly flights schedules issued to them by [PAL] in May 1998; and

(v) Complainant FRANCISCO T. ALISANGCO was **serving a seven-day suspension** and, thus, not required to work from 4 June 1998 to 10 June 1998 under Memorandum of Suspension, dated 5 May 1998.

negating that there was any stoppage of work or refusal to return to work on the part of the above-named complainants, as was made the basis of the termination of their employment by [PAL] on 7 June 1998 (6 June 1998 for complainant Gutiza), due solely to their union affiliation and membership.

FURTHER, [PAL] denied the above-named complainants due process in the termination of their employment in that it failed to notify them in writing of the charges against therein, did not give them any opportunity to be heard and to explain their side at an administrative investigation, and to date, has not served them with

any formal notice of the termination of their employment and the cause or causes therefor.

THUS, [PAL] summarily effected the dismissal of the above- named complainants without just or lawful cause.

B. **NON-PAYMENT OF SALARIES AND OTHER BENEFITS**

1. Basic or guaranteed pay
2. Productivity pay
3. Transportation allowance
4. Rice subsidy
5. Retirement Fund
6. Pilots Occupational Disability Fund
7. Vacation leave
8. Sick leave
9. Unutilized days off
10. Trip leave
11. Trip passes

C. **DAMAGES**

1. Actual Damages
2. Moral Damages
3. Exemplary Damages
4. Attorney's Fees
5. Cost of Suit.[21]

Complainants alleged that they were not participants of the June 5, 1998 strike of ALPAP and that they had no obligation to comply with the Return-to- Work Order of the DOLE Secretary. The respective allegations of the complainants are summed up below:

| COMPLAINANT | ALLEGATION/S |
|---|---|
| Alcañeses | He was the scheduled instructor of the simulator sessions on June 5, 8 & 9, 1998. However, the sessions were canceled due to the breakdown of the 737 simulator. He was |

[21] *Id*. at 130-131.

| | |
|---|---|
| | assigned on home reserve duty on June 6, 1998 and had a day-off on June 7, 1998. |
| Alisangco | He was serving a seven-day suspension from June 4 to 10, 1998. |
| Benjamin T. Ang | He flew Flight No. PR-722 from Manila to London and wassupposed to embark on a return trip from London to Manila on June 7, 1998. However, no aircraft arrived due to the strike. He arrived in Manila on June 13, 1998. |
| Vicente P. Ang | He was the First Officer in Flight No. PR-105 from San Francisco, which arrived in Manila on June 6, 1998. He immediately went to his hometown in Cebu City for his scheduled days-off until June 11, 1998, and thereafter on annual vacation leave until July 2, 1998. |
| Arroyo | He left Manila and flew to Europe, arriving there on June 5, 1998. He was stranded in Paris since no PAL aircraft arrived.He flew back to Manila on June 13, 1998. |
| Baquiran | He arrived in Manila from Los Angeles on June 4, 1998, and was off-duty until June 7, 1998. His next flight assignment was on June 8, 1998. He called PAL Dispatch Office on June 7, 1998 to confirm his flight but was advised that his flight was cancelled and that he was already dismissed. |
| Corpus | He arrived in Manila from Vancouver on May 30, 1998, and was off-duty until June 10, 1998. His next assignment was on June 11, 1998. |
| Cesar G. Cruz | He arrived in Manila from Riyadh on June 5, 1998, and was off-duty until June 9, 1998. His next flight assignment was on June 10, 1998. |
| Wi1fredo S. Cruz | He arrived from Honolulu on June 4, 1998, and was off-duty until June 8, 1998. He reported for his next assignment on June 9, 1998 but was unable to enter as Gate I of PAL compound was locked. |

| | |
|---|---|
| Dela Cruz | He arrived in Manila from Los Angeles on June 5, 1998, and was off-duty until June 12, 1998. His next assignment was on June 13, 1998. |
| Delos Reyes | He was on leave from May 26, 1998 to June 26, 1998. |
| Ecarma | After attending ground school at PAL Training Center on June4, 1998, he was on scheduled off-duty until June 17, 1998. His passport was in the custody of PAL as it was scheduled for processing from June 6, 1998 to June 13, 1998. His next flight assignment was on June 18, 1998. |
| Galisim | He underwent training in Toulouse, France from April 1998 toMay 22, 1998. He was waiting for his schedule from PAL. |
| Garcia | He was on leave from May 25, 1998 to June 10, 1998. |
| Gutiza | He was the Flight Officer of Flight No. PR-100 bound for Honolulu. Upon arriving back in Manila on June 7, 1998, he was told that he was already terminated. |
| Hinayon | He arrived in Manila from Bangkok on June 5, 1998, and was off-duty until June 10, 1998. His next flight assignment was on June 11, 1998. |
| Jadie | She was on maternity leave from June 5, 1998. She gave birth on June 24, 1998. |
| Jose | He flew from Honolulu and arrived in Manila on June 7, 1998. He was on scheduled day-off on June 8, 1998, and was on home reserve duty from June 9 to 12, 1998. |
| Labuga | He arrived in Manila from Dhadran on June 4, 1998, and was off-duty until June 10, 1998. |
| Lastimoso | He arrived in Manila on June 4, 1998 on Flight No. PR-298, and was off-duty until June 9, |

| | |
|---|---|
| | 1998. His next flight assignment was on June 10, 1998. |
| Matias | He commanded the flight from Manila to San Francisco, which arrived on June 4, 1998. He left San Francisco the following day or on June 5, 1998 and arrived in Manila on June 6, 1998. He was on scheduled days-off from June 7 to 11, 1998. His next flight assignment was on June 12, 1998. |
| Maturan | He was on sick leave from June 5-15, 1998 to undergo a medical operation called laparotomy. |
| Musong | He was on leave from May 22, 1998 to June 11, 1998. |
| Noble | He was on leave from May 22, 1998 to June 11, 1998. |
| Ocharan | He arrived in Manila from Honolulu in May 1998, and was off-duty until June 11, 1998. His next flight assignment was on June 12, 1998. |
| Piamonte | He arrived from Honolulu on June 6, 1998 and was on scheduled days-off until next flight on June 10, 1998. He reported on June 9, 1998 for said flight but could not enter the PAL compound. |
| Peña | He was on leave from June 5, 1998 to June 28, 1998. |
| Poe | He completed a ground course for the Airbus-320 captaincy in May 1998, and was waiting for his schedule from PAL. |
| Rodriguez | He arrived in Manila from San Francisco on June 2, 1998. He was on scheduled days-off and/or off-duty until June 12, 1998. His next flight assignment was on June 13, 1998. |
| Sabado | He was on leave from May 21, 1998 to June 11, 1998. |

| | |
|---|---|
| Sanchez | He arrived from Los Angeles in Manila on June 6, 1998, and was directed to leave the airport premises immediately. He was prevented from retrieving his car inside the employees' parking area. He had no scheduled flights until June 15, 1998. |
| Versoza | He was on duty on June 5, 1998 as he flew from Paris to Bangkok arriving there on June 6, 1998. He flew back to Manila on June 7, 1998 and had no scheduled flights until June 10, 1998. |

PAL terminated complainants from employment together with the strikers who disobeyed the Return-to-Work Order, even though complainants had valid reasons for not reporting for work.

Complainants, except for Gutiza,[22] further asserted that PAL did not observe the twin requirements of notice and hearing in effecting their termination; that PAL refused to admit them when they reported for work on June 26, 1998; and that PAL, which long planned to reduce its fleet and manpower, took advantage of the strike by dismissing its pilots *en masse*. Complainants thus prayed for reinstatement to their former positions without loss of seniority rights; backwages and other monetary claims; and moral and exemplary damages, and attorney's fees.

In its Motion to Dismiss and/or Position Paper for Respondent,[23] PAL averred that the Complaint for illegal dismissal is an offshoot of the Strike and Illegal Lockout Cases wherein the DOLE Secretary already adjudged with finality that the striking pilots lost their employment for participating in an illegal strike and/or disobeying the Return-to-Work Order. Hence, PAL argued that the Complaint was already barred by *res judicata.*

---

[22] *Id*. at 149. Gutiza, an ALPAP union officer, received a notice of termination dated June 5, 1998.

[23] *Id*. at 197-214.

In addition, PAL presented the following evidence to refute complainants' allegation that they were not strikers: (a) the logbook showing that complainants belatedly complied with the Return-to-Work Order on June 26, 1998; and (b) the photographs showing that some of complainants were at the strike area or picket line, particularly: Maturan, who was supposed to be on sick leave from June 1 to 15, 1998 but was seen picketing on June 9, 1998; Delos Reyes, Musong, Noble, Sabado, and Peña, who were supposed to be on vacation leave but were seen in the strike area[24] and who did not report back for work after their respective vacation leaves ended; Rodriguez, Baquiran, Corpus, Cesar G. Cruz, Wilfredo S. Cruz, De La Cruz, Ecarma, Galisim, Garcia, Hinayon, Labuga, Lastimosa, Poe, and Ocharan, who were off-duty but participated in the strike against PAL; and Alcañeses, Benjamin T. Ang, Vicente P. Ang, Arroyo, Gutiza, Jose, Matias, Piamonte, Sanchez, and Versoza who, after returning from abroad and completing their respective flights, joined the strike instead of offering their services to PAL who was in dire need of pilots at that time. As regards Jadie, PAL contended that she forfeited her employment by failing to report for work at the end of her maternity leave.

Labor Arbiter Francisco A. Robles (Robles) rendered a Decision[25] on December 11, 2000. According to Labor Arbiter Robles, the Illegal Dismissal Case may proceed independently from the Strike and Illegal Lockout Cases:

> On the threshold issue of jurisdiction, it is unfortunately a lost cause for [PAL] to argue that the instant case involves a dispute already assumed and decided by the Secretary of Labor in NCMB NCR-NS-12- 514-97 and its related cases. The strike case resolved by the Labor Secretary is not more and no less than that - a strike case wherein the validity of ALPAP's declared mass action on June 5, 1998 is at issue. In contrast, going by the allegations of the complaint in the instant case, the cause of action pleaded by complainants against [PAL] are for illegal dismissal, non-payment of salaries and benefits, and damages, based precisely on the pivotal fact alleged by

[24] Except for Peña.

[25] *Rollo* (G.R. No. 178501), pp. 155-208.

complainants that they are not "strikers" in the eyes of the law and yet had been inexplicably slapped with termination of their employment along with the strikers. Not one of the consolidated cases NCMB-NCR-NS-12-514-97, NCMB-NCR-NS-06-236-98 NLRC-NCR-No. 00-06-05235-98 shall resolve or has already resolved the instant termination dispute.

We note that this case has not been ordered consolidated with the strike case, nor has [PAL] at anytime asked for such consolidation. The June 1, 1999 Resolution of the Secretary of Labor in NCMB-NCR-NS-12-514-97, cited by [PAL] as having a binding effect on complainants do not mention the[m] at all, or purport to treat of their peculiar case of being non-strikers dismissed as strikers. We cannot therefore subscribe to the view advanced by [PAL] that. this is a dispute already assumed by the Secretary of Labor and decided by him with the affirmance of the strikers' loss of employment in his June 1, 1999 Resolution in NCMB-NCR-NS-12-514-97. Complainants should be given their day in court with respect to their claims herein as there is simply no basis for assuming that the same have already been resolved in the strike case.

It is well-settled that as an element of res judicata, there must be between the first and second action identity of parties, identity of subject matter and identity of causes of action. (Linzag *vs*. Court of Appeals, 291 SCRA 304; Nabus *vs*. Court of Appeals, G.R. No. 91670, February 7, 1991, 193 SCRA 732; VDA Fish Broker, et al. *vs*. NLRC, et al., G.R. Nos. 76142-43, December 27, 1993). The parties, subject matter and causes of action involved in this case are so vastly different from those in NCMB- NCR-NS-12-514-97 etc. that it is difficult if not virtually impossible to conceive how the resolution of such strike case can constitute res judicata in the case of complainants herein. This Office therefore cannot but exercise the jurisdiction duly invoked by complainants over this termination dispute with the filing of their complaint.[26]

Labor Arbiter Robles then proceeded to resolve the merits of the case in complainants' favor:

Turning now to the merits of the case, [PAL] has not rebutted and even admits that complainants' status and individual circumstances at or about the time of the strike declared on June 5, 1998 are essentially

---

[26] *Id*. at 168-170.

as stated by them in their complaint (i.e., that complainants were working or were on leave of absence, day-off, etc.) and related in further detail in their submitted individual sworn statements in the case. Since complainants were concededly working or otherwise excused from work at the time of the strike, their employment with [PAL] should not have been prejudiced or affected in any way at all by its occurrence. Yet [PAL] implemented the mass dismissal of close to 600 pilots, including complainants, without distinction as to their guilt or innocence of "striking".

A strike, by definition, is a temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute (Art. 212 (o) of the Labor Code). It is incongruous to accuse an employee who was actually working or was excused from work of "stoppage" of the work he was precisely carrying out or was not required to perform. [PAL] should have made these distinctions between the pilots who staged the strike and those peculiarly situated as complainants (working or excused from work) before taking action against its employees for the June 5, 1998 strike, instead of dismissing them in a sweepingly reckless, arbitrary, and oppressive manner.

Indeed, on the basis of [PAL]'s Return-to-Work Notice and the DOLE Return-to-Work Order, loss of employment in connection with the strike was a consequence to be faced only by "PAL pilots who joined the strike" and "all striking officers and members and officers (sic) of ALPAP", to whom the warning notices had expressly been issued. It should not have been made to apply to complainants, who were working or were not at all supposed to be working at the time of the strike, and therefore had every reason to believe that the issuances addressed to "strikers" do not refer to them. For the same reason, it does not make any sense to consider complainants as having "defied" the return-to-work mandate in failing to beat the deadline prescribed for the strikers. Precisely, complainants were <u>not</u> strikers.

[PAL] asserts that it "called" on its reserve pilots including complainants to man its flights when the strike was declared and in any case complainants should have "offered" their services at that time because it was in dire need of pilots. However, not a single piece of evidence was ever presented by [PAL] to prove that it sent out any rush dispatch messages to complainants, or even made a telephone call, to upgrade them to active duty or recall them from their leave of absences/days-off/suspension on the ground that their services were urgently needed. It being the responsibility of [PAL] under the CBA to draw up the pilots' monthly schedule and deploy

them on flight assignments, it did not have to wait for complainants to volunteer manning PAL flights. [PAL] had the prerogative to change complainants' flight schedules in accordance with the CBA. It did not exercise this prerogative. It cannot now blame complainants for the consequences of its own inaction.

As for [PAL]'s contention that the photographs taken of complainants at the picket line proves their being "strikers", the pictures do not show that those who admittedly were working at the time of the strike were in fact among the picketers at the Company premises and not on the PAL flights that they claim to have crewed for. In any case, [PAL] does not take issue with the working status of the complainants who had flights on or about June 5, 1998; only that complainants did ·not report for work thereafter. On the other. hand, the rest of the complainants were excused from work. Their "free time" would be meaningless if they were not at liberty to man the picket line while off-duty without fear of adverse consequences from their lawful exercise of their guaranteed rights. It is to be stressed that complainants have sufficiently shown by their uncontradicted evidence that they were working or were excused from work during the material period of the strike until their dismissal. Without more, the unexplained pictures of the complainants at the picket line (most ofwhich were taken long after June 9, 1998) cannot be said to constitute a proven case of "striking."

We further find pertinent the cited cases of Bangalisan vs. Court of Appeals (276 SCRA 619) and Dela Cruz vs. Court of Appeals (305 SCRA 303) to the effect that an alleged "striker" who was excused from work during a strike staged by his co-workers cannot be penalized with the loss of his employment as a striker in the absence of his actual participation in the strike since those who avail of their free time "to dramatize their grievances and to dialogue with the proper authorities within the bounds of the law" cannot be held liable for their participation in the mass action against their employer, this being a valid exercise of their constitutionally guaranteed rights. Picketers are not necessarily strikers. If complainants had manned the picket lines at some time during their off-duty, it was their right to do so. They cannot be accused of stoppage of work if they do.

As correctly pointed out by complainants, [PAL] certainly had the records to verify if complainants were in fact striking, working, or off- duty as of June 5, 1998. Despite this, it precipitately ousted complainants from their employment in a mass purging of about 600 pilots as strikers. Significantly, [PAL] had made no attempt to rebut

complainants' evidence (consisting of sworn statements of witnesses and documentary exhibits) tending to show that:

1. Management's declared intention since 1997 was to retrench/retire about 200 pilots and drastically downscale operations because of alleged business losses, but its restructuring program gained no ground despite the passage of several months because ALPAP was staunchly opposed to it and in the meantime, [PAL] continued "bleeding';

2. A PAL management pilot, Capt. Emmanuel Generoso, disclosed to several ALPAP pilots that a strike by ALPAP would be a welcome development as it would make management's job of ridding the company pilots easier;

3. The instant ALPAP declared the strike, complainants ceased receiving their salaries, allowances, and benefits which fell due, as though [PAL] had merely been waiting for the strike to happen and, this done, it considered the pilots' termination as effected ipso facto. Complainants were not furnished any written notice requiring them to show cause why they should not be dismissed from employment for any offense; nor were they given written notices of termination (except for complainant Liberato Gutiza who received a termination letter with the effectivity date of June 6, 1998 after being made to crew Flight No. PR-100 which arrived in Manila from Honolulu on June 7, 1998);

4. Confirming the veracity of several press statements made by [PAL] on its mass dismissal of about 600 pilots by June 7, 1998, when some of the complainants thereafter called PAL Flight Deck Crew Scheduling to check on their next scheduled flights, they were informed that they were terminated employees and no longer had any flight assignments, and would furthermore be barred from entering the Gate to [PAL] offices;

5. Complainants were given employment application forms to accomplish and submit if they were to resume their work as PAL pilots; and

6. [PAL] considered its dismissal of almost 600 pilots, including complainants, as "reaffirmed" under the DOLE

> Return-to-Work Order as of June 9, 1998 or upon the lapse of the 24-hour deadline fixed therein. It immediately downscaled its flight operations on the basis of a 44-man pilot complement, shutting down several stations in the process.

The foregoing facts, which stand in the record unrebutted by countervailing evidence from [PAL], all too clearly reveal management's prior decision and firm resolve to dismiss its pilots at the first opportunity, which it found in the June 5, 1998 strike. Of course, complainants' case presented an unexpected complication since they cannot be lumped together with the strikers given their circumstances at the time of the strike. [PAL] however took its chances, it dismissed them anyway and is now straining in vain to rationalize complainants' termination as "strikers". The facts present a classical case of dismissal in bad faith. Complainants never had a chance to hold on to their employment since [PAL] was hell-bent from the start on the mass dismissal of its pilots regardless of the existence of actual and valid grounds to terminate employment. It should be made to face the consequences thereof.[27]

Ultimately, Labor Arbiter Robles adjudicated:

**IN VIEW OF THE FOREGOING,** judgment is hereby rendered:

(a) Finding the dismissal of complainants to be illegal;

(b) Ordering [PAL] to reinstate complainants to their former positions without loss of seniority rights, privileges and benefits;

(c) Ordering [PAL] to pay complainants their full backwages from June 9, 1998 up to date of reinstatement, x x x.

x x x x x x x x x

and in addition, (i) longevity pay at ₱500.00/month for every year of service based on seniority date falling after June 9, 1998; (ii) Christmas bonus for 1998 and 1999 per the CBA; (iii) complainants' proportionate share in the ₱5 million contribution of [PAL] to the Retirement Fund, and (iv) cash equivalent of vacation leave and sick leave which complainants earned from June 9, 1998 until reinstatement based on the CBA scheduled (sic).

---

[27] *Id*. at 170-178.

(d) Ordering [PAL] to pay moral damages to complainants in the amount of ₱300,000.00 each;

(e) Ordering [PAL] to pay exemplary damages to complainants in the amount of ₱200,000.00 each;

(f) Ordering [PAL] to pay complainants on their money claims for unpaid salaries for the period June 1-8, 1998, and productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1-8, 1998; and

(g) Ordering [PAL] to pay complainants attorney's fees in an amount equivalent to ten percent (10%) of the total monetary award.[28]

PAL appealed before the NLRC, docketed as NLRC NCR CA No. 027348-01. In its Decision dated November 6, 2001, the NLRC reversed Labor Arbiter Robles' Decision.

On the jurisdictional and procedural matters, the NLRC found that: (a) The on-going receivership proceedings before the Securities and Exchange Commission (SEC) involving PAL had no effect on the jurisdiction of the Labor Arbiter or the NLRC over the Illegal Dismissal Case; (b) The Illegal Dismissal Case was not barred by *res judicata* despite the prior ruling of the DOLE Secretary in the Strike Case because the latter did not resolve the particular cause of action asserted by the complainants in the former; and (c) The issue on forum shopping was rendered moot by the finding of the NLRC on the absence of *res judicata.*

The NLRC next addressed the substantive issue of whether or not complainants were illegally dismissed. The NLRC ruled in the negative for all the complainants except Jadie. According to the NLRC, the strike was not a one-day affair. It started on June 5, 1998 and lasted until the later part of June 1998. Complainants' assertion that they were not strikers was controverted by the photographs submitted as evidence by PAL showing that several complainants were at the strike area on June 9, 1998, some even holding a streamer saying: "WE ARE

---

[28] *Id*. at 202-208.

ON STRIKE." The NLRC gave weight to the finding of the DOLE Secretary, affirmed by the Court of Appeals in CA-G.R. SP No. 54880, that ALPAP was served a copy of the Return-to-Work Order on June 8, 1998, thus, the ALPAP strikers had 24 hours, or until June 9, 1998, to comply with said Order. However, based on the logbook, the complainants only reported back to work on June 26, 1998. As a result of their defiance of the DOLE Secretary's Return-to-Work Order, complainants lost their employment status as of June 9, 1998. Even if complainants were supposedly on official leave or off-duty during the strike, records revealed that their official leave or off-duty status had expired at least two weeks before June 26, 1998. The logbook establishing that complainants reported for work only on June 26, 1998 must prevail over the complainants' unsupported allegations that they called PAL offices upon the expiration of their respective leaves or days off to verify the status of their flights. The NLRC additionally pointed out that complainants, while claiming they were not strikers, reported back for work in compliance with the DOLE Secretary's Return-to-Work Order, their signatures appearing in the logbook pages under the captions: "RETURN-TO-WORK RETURNEES," "RETURN-TO-WORK COMPLIANCE," and "RETURN-TO-WORK DOLE COMPLIANCE."

In the case of Gutiza, the NLRC held that he was dismissed for being a union officer who knowingly participated in the illegal strike.[29] The NLRC also particularly noted that while other complainants belatedly reported for work on June 26, 1998 together with the other ALPAP pilots, Baquiran did not ever attempt to comply with the Return-to- Work Order, and was declared to have simply abandoned his job.[30] The NLRC only spared Jadie, there being no evidence that she participated in the illegal strike. Jadie was on leave being in her ninth month of pregnancy at the time of the strike, actually giving birth on June 24, 1998. The NLRC opined that given her circumstances,

---

[29] *Id*. at 146.

[30] *Id*. at 150.

it was impossible for Jadie to comply with the Return-to- Work Order, hence, she was illegally dismissed on June 9, 1998.[31] However, Jadie could no longer be reinstated. Jadie's former position as Captain of the F-50 aircraft no longer existed as said aircraft was returned to the lessors in accordance with the Amended and Restated Rehabilitation Plan of PAL. Also, per the certification of the Air Transportation Office (ATO), Jadie's license already expired in 1998. Consequently, the NLRC directed PAL to pay Jadie backwages and separation pay, instead of reinstatement.

The dispositive portion of the NLRC Decision dated November 6, 2001 reads:

> WHEREFORE, premises considered, we hold that the following complainants lost their employment status with respondent PAL for cause and in accordance with law: Arnold S. Corpus, Cesar G. Cruz, Liberato D. Gutiza, Luisito M. Jose, Paterno C. Labuga, Jr., Baltazar B. Musong, Arturo A. Sabado, Jr., Nilo S. Rodriguez, Edmundo delos Reyes, Jr., Tito F. Garcia, Virgilio V. Ecarma, Noel Y. Lastimoso, Virgilio N. Ocharan, Rodolfo O. Poe, Efren S. Alcañeses, Benjamin T. Ang, Vicente T. Ang, Silvestre D. Arroyo, Manuel P. Sanchez, Nicomen H. Versoza, Jr., Danilo C. Matias, Francisco T. Alisangco, Antonio O. Noble, Jr., Ben T. Maturan, Wilfredo S. Cruz, Ismael F. Galisim, Gabriel M. Piamonte, Jr., Elmer F. Peña, Nino B. dela Cruz, Ruderico C. Baquiran and Ryan Jose C. Hinayon.
>
> The Labor Arbiter's decision declaring that the aforementioned complainants were illegally dismissed, and all the monetary awards granted to them, are hereby reversed and set aside for lack of merit. The Labor Arbiter's order for the reinstatement of the complainants is likewise declared to be devoid of merit, and any claim based on said order of reinstatement, such as, but not limited to, backwages pending appeal, is declared to be without any legal basis.
>
> Respondent PAL is hereby directed to pay complainant Gladys L. Jadie, the monetary award granted in the assailed decision which is ₱2,024,865.00 and (I) longevity pay at ₱500.00/month of every year of service based on seniority date falling after June 9, 1998; (II) Christmas bonus for 1998 and 1999 per the CBA; (III) [Jadie's]

---

[31] *Id*. at 151.

proportionate share in the ₱5 million contribution of [PAL] to the Retirement Fund, and (IV) cash equivalent of vacation leave and sick leave which [Jadie] earned from June 9, 1998 until September 11, 2000.

[PAL] is also ordered to pay [Jadie] her unpaid salaries for the period June 1-8, 1998 and productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1-8, 1998.

In addition, [PAL] is ordered to pay [Jadie] separation pay equivalent to one half (1/2) month for every year of service as a PAL employee.

[PAL] is ordered to pay [Jadie] attorney's fees in an amount equivalent to ten percent (10%) of the total monetary award.[32]

Aggrieved, Rodriguez, *et al.,* Dela Cruz, and Poe filed a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 71190, assailing the NLRC judgment for having been rendered with grave abuse of discretion. Dela Cruz subsequently withdrew his Petition on June 25, 2003.

The Court of Appeals promulgated its Decision on November 30, 2006 favoring Rodriguez, *et al.,* and Poe. The appellate court adjudged that: (a) PAL indiscriminately dismissed on June 7, 1998 its more than 600 pilots, including Rodriguez, *et al.* and Poe, who did not comply with its Return-to- Work Notice published in the Philippine Daily Inquirer; (b) PAL simply took advantage of the strike on June 5, 1998 to dismiss ALPAP members *en masse,* regardless of whether the members participated in the strike or not, so as to reduce its pilots complement to an acceptable level and to erase seniority; (c) since they were already terminated on June 7, 1998, any activity undertaken by Rodriguez, *et al.* and Poe on and after June 9, 1998 was already immaterial; (d) the NLRC gave undue weight to the photographs and logbook presented by PAL; (e) the photographs were not properly identified nor the circumstances under which they had been taken satisfactorily established; (f) the logbook and its entries are self-serving because the logbook

[32] *Id*. at 152-154.

was supplied by PAL itself and there was a dearth of explanation as to the implications of the pilots' signatures appearing therein and the significance of the annotations "RETURN-TO-WORK RETURNEES," "RETURN-TO-WORK COMPLIANCE," and "RETURN-TO-WORK DOLE COMPLIANCE;" and (g) as for Jadie, PAL did not satisfactorily prove that her reinstatement was an impossibility as there was no showing that her services were obsolete or could no longer be utilized.

Although the Court of Appeals essentially agreed with the findings and conclusion of Labor Arbiter Robles that Rodriguez, *et al.* and Poe were illegally dismissed, it modified Labor Arbiter Robles' Decision as follows:

> All told, We find that [NLRC] gravely abused its discretion in setting aside the Decision of the Labor Arbiter which found that [Rodriguez, *et al*. and Poe] had indeed been illegally dismissed. We are mindful, however, that the relief of reinstatement of [Rodriguez, *et al.* and Poe] may no longer be viable or practicable in view of several factors, i.e., the animosity between the parties ([Rodriguez, *et al.* and Poe] occupy positions of confidence) herein as engendered by this protracted and heated litigation, the fact that [Rodriguez, *et al.* and Poe) may have already secured equivalent or other employments after the significant lapse of time since the institution of their suit and, finally, the nature of [PAL's] business which require the continuous operations of its planes, and because of which, new pilots have already been hired.
>
> We, therefore, modify the Decision of the Labor Arbiter by affirming the grant of backwages to [Rodriguez, *et al.* and Poe] but, instead, order the payment of separation pay in lieu of reinstatement. Moreover, We delete the awards of moral and exemplary damages as well as attorney's fees. Moral and exemplary damages cannot be justified solely upon the premise that an employer dismissed his employee without cause or due process. The termination must be attended with bad faith, or fraud or in a manner oppressive to labor, which were not convincingly established herein. Where a party is not entitled to actual or moral damages, an award of exemplary damages is likewise without basis (San Miguel Corporation *vs*. Del Rosario, 477 SCRA 619; Tanay Recreation Center and Development Corp. *vs*. Fausto, 455 SCRA 457). Likewise, the policy of the law is to put no premium

on the right to litigate. Hence, the award of attorney's fees should also be deleted.[33]

The Court of Appeals decreed in the end:

**WHEREFORE**, premises considered, the petition for certiorari is hereby **GRANTED**. The Decisions of the public respondent NLRC, dated November 6, 2001 and March 25, 2002 are hereby **SET ASIDE** and the Decision of Labor Arbiter Francisco Robles, dated December 11, 2000, is **REINSTATED** subject to the **MODIFICATIONS** that in lieu of reinstatement, [PAL] is ordered to pay [Rodriguez, *et al.* and Poe] separation pay and that the awards of moral and exemplary damages and attorney's fees are hereby deleted.

The Court **NOTES** the withdrawal of the petition insofar as petitioner Nino de la Cruz is concerned.[34]

Rodriguez, *et al.,* and Poe filed a Motion for Partial Reconsideration, while PAL filed a Motion for Reconsideration of the foregoing Decision, but the appellate court denied both motions in a Resolution[35] dated June 8, 2007.

Hence, Rodriguez, *et al.,* and PAL assail before this Court the Decision dated November 30, 2006 and Resolution dated June 8, 2007 of the Court of Appeals by way of separate Petitions for Review on *Certiorari,* docketed as G.R. No. 178501 and G.R. No. 178510, respectively.

In G.R. No. 178501, Rodriguez, *et al.,* assigned four errors on the part of the Court of Appeals, *viz.:*

I. THE COURT OF APPEALS ERRED IN ORDERING THE PAYMENT OF SEPARATION PAY TO [RODRIGUEZ, *ET AL.*] IN LIEU OF REINSTATEMENT, ON THE GROUNDS THAT [RODRIGUEZ, *ET AL.]* "MAY HAVE ALREADY SECURED" OTHER EMPLOYMENT AND THAT "NEW PILOTS HAVE ALREADY BEEN HIRED", CONTRARY TO THE EXPRESS PROVISIONS OF THE LABOR CODE,

---

[33] *Id*. at 109-110.

[34] *Id*. at 110.

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

THE IMPLEMENTING RULES AND REGULATIONS THEREOF, AS WELL AS EXISTING JURISPRUDENTIAL POLICY, ALL MANDATING THAT ILLEGALLY DISMISSED EMPLOYEES SHALL BE ENTITLED TO THE TWIN REMEDIES OF REINSTATEMENT AND PAYMENT OF BACKWAGES.

II. THE COURT OF APPEALS ERRED WHEN IT DENIED THE AWARD OF REINSTATEMENT ON THE SUPPOSITION THAT SAID RELIEF, WHICH IS A RIGHT AUTHORIZED UNDER THE LAW AND EXISTING JURISPRUDENCE, "MAY NO LONGER BE VIABLE OR PRACTICABLE" IN THE PRESENT CASE DUE TO ALLEGED STRAINED RELATIONS BETWEEN THE PARTIES.

III. THE COURT OF APPEALS ERRED IN DENYING THE AWARD OF MORAL AND EXEMPLARY DAMAGES, DESPITE ITS OWN FINDING THAT PRIVATE RESPONDENT HAD ENGAGED IN AN "INDISCRIMINATE DISMISSAL" AND HAD SIMPLY TAKEN ADVANTAGE OF THE 5 JUNE 1998 STRIKE TO DISMISS [RODRIGUEZ, *ET AL.]* EN MASSE, IN VIOLATION OF LAW AND JURISPRUDENTIAL PRECEDENTS.

IV. THE COURT OF APPEALS ERRED IN DENYING THE AWARD OF ATTORNEY'S FEES, DESPITE FINDING THAT PRIVATE RESPONDENT HAD ARBITRARILY AND CAPRICIOUSLY TERMINATED [RODRIGUEZ, *ET AL'S.]* EMPLOYMENT, THUS FORCING THEM TO LITIGATE AND CONSEQUENTLY INCUR EXPENSES TO PROTECT THEIR RIGHTS AND INTERESTS, CONTRARY TO SETTLED LAW AND JURISPRUDENCE.[36]

Whereas PAL based its Petition in G.R. No. 178510 on the following assignment of errors:

I. [RODRIGUEZ, *ET AL.* AND POE'S] COMPLAINT FOR ILLEGAL DISMISSAL IS BARRED BY THE FINAL AND EXECUTORY DECISION IN THE COMPLAINT FOR

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

ILLEGAL LOCKOUT FILED BY ALPAP IN BEHALF OF ALL ITS MEMBERS, INCLUDING [RODRIGUEZ, *ET AL.* AND POE].

II. THE DECISION OF THIS HONORABLE COURT IN G.R. NO. 170069 FILED BY ONE OF [RODRIGUEZ, *ET AL.* AND POE'S] ORIGINAL CO-COMPLAINANTS (CESAR CRUZ) IS APPLICABLE AND BINDING ON [RODRIGUEZ, *ET AL.* AND POE], BEING BASED ON THE SAME FACTS AND EVIDENCE.

III. THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT REVIEWED AND REASSESSED THE FACTUAL FINDINGS OF THE NLRC AND SUPPLANTED THE SAME WITH ITS OWN FACTUAL FINDINGS AND CONCLUSIONS IN A PETITION FOR *CERTIORARI* WHERE THE ONLY ISSUE WAS WHETHER THE NLRC ACTED WITHOUT JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION.

IV. THE SIXTH DIVISION OF THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PAL MERELY TOOK ADVANTAGE OF THE ALPAP STRIKE TO DISMISS ITS PILOTS *EN MASSE,* CONTRARY TO THE FACTUAL FINDINGS OF THE SECRETARY OF LABOR, THE NLRC, THE COURT OF APPEALS AND THIS HONORABLE COURT IN EARLIER CASES INVOLVING THE SAME FACTS AND EVIDENCE.[37]

In the meantime, during the pendency of the instant Petitions, the Court decided on June 6, 2011 *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.,*[38] docketed as G.R. No. 168382 *(2nd ALPAP case).* The *2nd ALPAP case* arose from events that took place following the finality on August 29, 2002 of the Resolution dated April 10, 2002 which dismissed the *1st ALPAP case.* Below is the factual background for the *2nd ALPAP case* as summarized by the Court in said Decision:

---

[37] *Rollo* (G.R. No. 178510), pp. 35-36.

[38] 665 Phil. 679 (2011).

On January 13, 2003, ALPAP filed before the Office of the DOLE Secretary a Motion in [the Strike Case], requesting the said office to conduct an appropriate legal proceeding to determine who among its officers and members should be reinstated or deemed to have lost their employment with PAL for their actual participation in the strike conducted in June 1998. **ALPAP contended that there is a need to conduct a proceeding in order to determine who actually participated in the illegal strike since not only the striking workers were dismissed by PAL but all of ALPAP's officers and members, even though some were on official leave or abroad at the time of the strike.** It also alleged that there were some who joined the strike and returned to work but were asked to sign new contracts of employment, which abrogated their earned seniority. Also, there were those who initially defied the return-to-work order but immediately complied with the same after proper receipt thereof by ALPAP's counsel. However, PAL still refused to allow them to enter its premises. **According to ALPAP, such measure, as to meet the requirements of due process, is essential because it must be first established that a union officer or member has participated in the strike or has committed illegal acts before they could be dismissed from employment.** In other words, a fair determination of who must suffer the consequences of the illegal strike is indispensable since a significant number of ALPAP members did not at all participate in the strike. The motion also made reference to the favorable recommendation rendered by the Freedom of Association Committee of the International Labour Organization (ILO) in ILO Case No. 2195 which requested the Philippine Government "to initiate discussions in order to consider the possible reinstatement in their previous employment of all ALPAP's workers who were dismissed following the strike staged in June 1998." A Supplemental Motion was afterwards filed by ALPAP on January 28, 2003, this time asking the DOLE Secretary to resolve all issues relating to the entitlement to employment benefits by the officers and members of ALPAP, whether terminated or not.

In its Comment to ALPAP's motions, PAL argued that the motions cannot legally prosper since the DOLE Secretary has no authority to reopen or review a final judgment of the Supreme Court relative to [the Strike Case]; that the requested proceeding is no longer necessary as the CA or this Court did not order the remand of the case to the DOLE Secretary for such determination; that the NLRC rather than the DOLE Secretary has jurisdiction over the motions as said motions partake of a complaint for illegal dismissal with monetary

claims; and that all money claims are deemed suspended in view of the fact that PAL is under receivership.

On January 24, 2003, the DOLE called the parties to a hearing to discuss and clarify the issues raised in ALPAP's motions. In a letter dated July 4, 2003 addressed to ALPAP President, Capt. Ismael C. Lapus, Jr., then Acting DOLE Secretary, Imson, resolved ALPAP's motions in the following manner:

x x x x x x x x x

> After a careful consideration of the factual antecedents, applicable legal principles and the arguments of the parties, this Office concludes that [the Strike Case] has indeed been resolved with finality by the highest tribunal of the land, the Supreme Court. Being final and executory, this Office is bereft of authority to reopen an issue that has been passed upon by the Supreme Court.
>
> It is important to note that in pages 18 to 19 of ALPAP's Memorandum, it admitted that individual complaints for illegal dismissal have been filed by the affected pilots before the NLRC. It is therefore an implied recognition on the part of the pilots that the remedy to their present dilemma could be found in the NLRC.

x x x x x x x x x

> Thus, to avoid multiplicity of suits, splitting causes of action and forum-shopping which are all obnoxious to an orderly administration of justice, it is but proper to respect the final and executory order of the Supreme Court in this case as well as the jurisdiction of the NLRC over the illegal dismissal cases. Since ALPAP and the pilots have opted to seek relief from the NLRC, this Office should respect the authority of that Commission to resolve the dispute in the normal course of law. This Office will no longer entertain any further initiatives to split the jurisdiction or to shop for a forum that shall only foment multiplicity of labor disputes. Parties should not jump from one forum to another. This Office will make sure of that.
>
> By reason of the final ruling of the Honorable Supreme Court, the erring pilots have lost their employment status and second, because these pilots have filed cases to contest such loss before another forum, the Motion and Supplemental Motion of ALPAP

as well as the arguments raised therein are merely **NOTED** by this Office."

ALPAP filed its motion for reconsideration arguing that the issues raised in its motions have remained unresolved hence, it is the duty of DOLE to resolve the same it having assumed jurisdiction over the labor dispute. ALPAP also denied having engaged in forum shopping as the individual complainants who filed the cases before the NLRC are separate and distinct from ALPAP and that the causes of action therein are different. According to ALPAP, there was clear abdication of duty when then Acting Secretary Imson refused to properly act on the motions. In a letter dated July 30, 2003, Secretary Sto. Tomas likewise merely noted ALPAP's motion for reconsideration, reiterating the DOLE's stand to abide by the final and executory judgment of the Supreme Court.

***Proceedings before the Court of Appeals***

ALPAP filed a petition for *certiorari* with the CA, insisting that the assailed letters dated July 4, 2003 and July 30, 2003, which merely noted its motions, were issued in grave abuse of discretion.

x x x x x x x x x

The CA, in its Decision dated December 22, 2004, dismissed the petition. It found no grave abuse of discretion on the part of Sto. Tomas and Imson in refusing to conduct the necessary proceedings to determine issues relating to ALPAP members' employment status and entitlement to employment benefits. The CA held that both these issues were among the issues taken up and resolved in the June 1, 1999 DOLE Resolution which was affirmed by the CA in CA-G.R. SP No. 54880 and subsequently determined with finality by this Court in [the *1ST ALPAP case*]. Therefore, said issues could no longer be reviewed. The CA added that Sto. Tomas and Imson merely acted in deference to the NLRC's jurisdiction over the illegal dismissal cases filed by individual ALPAP members.

ALPAP moved for reconsideration which was denied for lack of merit in CA Resolution dated May 30, 2005.[39] (Emphases supplied.)

ALPAP once more sought remedy from this Court through a Petition for Review on *Certiorari* in the *2nd ALPAP case.*

---

[39] *Id*. at 684-688.

The Court therein denied the Petition of ALPAP for lack of merit, based on the ratiocination extensively quoted below:

We deny the petition.

*There was no grave abuse of discretion on the part of Sto. Tomas and Imson in merely noting ALPAP's twin motions in due deference to a final and immutable judgment rendered by the Supreme Court.*

From the June 1, 1999 DOLE Resolution, which declared the strike of June 5, 1998 as illegal and pronounced all ALPAP officers and members who participated therein to have lost their employment status, an appeal was taken by ALPAP. This was dismissed by the CA in CA-G.R. SP No. 54880, which ruling was affirmed by this Court and which became final and executory on August 29, 2002.

In the instant case, ALPAP seeks for a conduct of a proceeding to determine who among its members and officers actually participated in the illegal strike because, it insists, the June 1, 1999 DOLE Resolution did not make such determination. However, as correctly ruled by Sto. Tomas and Imson and affirmed by the CA, such proceeding would entail a reopening of a final judgment which could not be permitted by this Court. Settled in law is that once a decision has acquired finality, it becomes immutable and unalterable, thus can no longer be modified· in any respect. Subject to certain recognized exceptions, the principle of immutability leaves the judgment undisturbed as "nothing further can be done except to execute it."

True, the dispositive portion of the DOLE Resolution does not specifically enumerate the names of those who actually participated in the strike but only mentions that those strikers who failed to heed the return-to-work order are deemed to have lost their employment. This omission, however, cannot prevent an effective execution of the decision. As was held in *Reinsurance Company of the Orient, Inc. v. Court of Appeals,* any ambiguity may be clarified by reference primarily to the body of the decision or supplementary to the pleadings previously filed in the case. In any case, especially when there is an ambiguity, "a judgment shall be read in connection with the entire record and construed accordingly."

*There is no necessity to conduct a proceeding to determine the participants in the illegal strike or those who refused to heed the return to work order because the ambiguity can be cured by reference to the body of the decision and the pleadings filed.*

**A review of the records reveals that in [the Strike Case], the DOLE Secretary declared the ALPAP officers and members to have lost their employment status based on either of two grounds, *viz.:* their participation in the illegal strike on June 5, 1998 or their defiance of the return-to-work order of the DOLE Secretary. The records of the case unveil the names of each of these returning pilots. The logbook with the heading "Return to Work Compliance/ Returnees" bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. From this crucial and vital piece of evidence, it is apparent that each of these pilots is bound by the judgment. Besides, the complaint for illegal lockout was filed on behalf of all these returnees. Thus, a finding that there was no illegal lockout would be enforceable against them. In fine only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution.**

**ALPAP harps on the inequity of PAL's termination of its officers and members considering that some of them were on leave or were abroad at the time of the strike. Some were even merely barred from returning to their work which excused them for not complying immediately with the return-to-work order.** Again, a scrutiny of the records of the case discloses that these allegations were raised at a very late stage, that is, after the judgment has finally decreed that the returning pilots' termination was legal. Interestingly, these defenses were not raised and discussed when the case was still pending before the DOLE Secretary, the CA or even before this Court. We agree with the position taken by Sto. Tomas and Imson that from the time the return-to-work order was issued until this Court rendered its April 10, 2002 resolution dismissing ALPAP's petition, no ALPAP member has claimed that he was unable to comply with the return-to-work directive because he was either on leave, abroad or unable to report for some reason. **These defenses were raised in ALPAP's**

**twin motions only after the Resolution in G.R. No. 152306 reached finality in its last ditch effort to obtain a favorable ruling. It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings. ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process.**

**Relevant to mention at this point is that when NCMB NCR NS 12-514-97 (strike/illegal lockout case) was still pending, several complaints for illegal dismissal were filed before the Labor Arbiters of the NLRC by individual members of ALPAP, questioning their termination following the strike staged in June 1998. PAL likewise manifests that there is a pending case involving a complaint for the recovery of accrued and earned benefits belonging to ALPAP members. Nonetheless, the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment.**[40] (Emphases supplied.)

The Decision dated June 6, 2011 of the Court in th *2nd ALPAP case* became final and executory on September 9, 2011.

Bearing in mind the final and executory judgments in the *1st* and *2nd ALPAP cases,* the Court denies the Petition of Rodriguez, *et al.,* in G.R. No. 178501 and partly grants that of PAL in G.R. No. 178510.

The Court, in the *2nd ALPAP case,* acknowledged the illegal dismissal cases instituted by the individual ALPAP members before the NLRC following their termination for the strike in June 1998 (which were apart from the Strike and Illegal Lockout Cases of ALPAP before the DOLE Secretary) and affirmed the jurisdiction of the NLRC over said illegal dismissal cases. The Court, though, also expressly pronounced in the *2nd ALPAP case* that "the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant

---

[40] *Id*. at 689-693.

case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment."

The Petitions at bar began with the Illegal Dismissal Case of Rodriguez, *et al.* and eight other former pilots of PAL before the NLRC. Among the Decisions rendered by Labor Arbiter Robles, the NLRC, and the Court of Appeals herein, it is the one by the NLRC which is consistent and in accord with the disposition for effective enforcement and execution of the final judgments in the *1st and 2nd ALPAP cases.*

The *1st and 2nd ALPAP cases* which became final and executory on August 29, 2002 and September 9, 2011, respectively, constitute *res judicata* on the issue of who participated in the illegal strike in June 1998 and whose services were validly terminated.

The Court expounded on the doctrine of *res judicata* in *Spouses Layos v. Fil-Estate Golf and Development, Inc.*[41]:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.
>
> It is espoused in the Rules of Court, under paragraphs (b) and (c) of Section 47, Rule 39, which provide:
>
> SEC. 47. *Effect of judgments or final orders.*
>
> — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between

[41] 583 Phil. 72, 101-105 (2008).

the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment".

The Resolution of this Court in *Calalang v. Register of Deeds of Quezon City,* provides the following enlightening discourse on conclusiveness of judgment:

The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.

The second concept — conclusiveness of judgment— states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity

> with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit *(Nabus vs. Court of Appeals,* 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.

Another case, *Oropeza Marketing Corporation v. Allied Banking Corporation,* further differentiated between the two rules of *res judicata,* as follows:

> There is "**bar by prior judgment**" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, **there is identity of parties, subject matter**, **and causes of action.** In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where **there is identity of parties** in the first and second cases, **but no identity of causes of action**, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "**conclusiveness of judgment**". Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.
>
> In sum, conclusiveness of judgment bars the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action. (Emphases ours.)

The elements for *res judicata* in the second concept, *i.e.,* conclusiveness of judgment, are extant in these cases.

There is **identity of parties** in the *1st and 2nd ALPAP cases,* on one hand, and the Petitions at bar. While the *1st and 2nd ALPAP* cases concerned ALPAP and the present Petitions involved several individual members of ALPAP, the union acted in the *1st and 2nd ALPAP cases* in representation of its members. In fact, in the *2nd ALPAP case,* the Court explicitly recognized that the complaint for illegal lockout was filed by ALPAP on behalf of all its members who were returning to

work.[42] Also in the said case, ALPAP raised, albeit belatedly, exactly the same arguments as Rodriguez, *et al.* herein. Granting that there is no absolute identity of parties, what is required, however, for the application of the principle of *res judicata* is not absolute, but only substantial identity of parties. ALPAP and Rodriguez, *et al.* share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions. Such identity of interest is sufficient to make them privy-in-law, one to the other, and meets the requisite of substantial identity of parties.[43]

There is likewise an **identity of issues** between the *1st and 2nd ALPAP cases* and these cases. Rodriguez, *et al.,* insist that they did not participate in the June 1998 strike, being on official leave or scheduled off-duty. Nonetheless, on the matter of determining the identities of the ALPAP members who lost their employment status because of their participation in the illegal strike in June 1998, the Court is now conclusively bound by its factual and legal findings in the *1st and 2nd ALPAP cases.*

In the *1st ALPAP case,* the Court upheld the DOLE Secretary's Resolution dated June 1, 1999 declaring that the strike of June 5, 1998 was illegal and all ALPAP officers and members who participated therein had lost their employment status. The Court in the *2nd ALPAP case* ruled that even though the dispositive portion of the DOLE Secretary's Resolution did not specifically enumerate the names of those who actually participated in the illegal strike, such omission cannot prevent the effective execution of the decision in the *1st ALPAP case.* The Court referred to the records of the Strike and Illegal Lockout Cases, particularly, the logbook, which it unequivocally pronounced as a "crucial and vital piece of evidence." In the words of the Court in the *2nd ALPAP case,* "[t]he logbook with

---

[42] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc., supra* note 38 at 691.

[43] *Firestone Ceramics, Inc. v. Court of Appeals,* 372 Phil. 401, 422 (1999).

the heading 'Return-To-Work Compliance/Returnees' bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. x x x In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution."

The logbook was similarly submitted as evidence by PAL against the complainants in the Illegal Dismissal Case now on appeal. Rodriguez, *et al.,* except for Jadie and Baquiran, were signatories in the logbook as returnees,[44] bound by the Resolution dated June 1, 1999 of the DOLE Secretary. The significance and weight accorded by the NLRC to the logbook can no longer be gainsaid considering the declarations of the Court in the *2nd ALPAP case.* Moreover, the logbook entries were corroborated by photographs showing Rodriguez, *et al.,* excluding Baquiran, Galisim, Jadie, Wilfredo S. Cruz, and Piamonte, actually participating in the strike. The objection that the photographs were not properly authenticated deserves scant consideration as rules of evidence are not strictly observed in proceedings before administrative bodies like the NLRC, where decisions may be reached on the basis of position papers only.[45] It is also worth noting that those caught on photographs did not categorically deny being at the strike area on the time/s and date/s the photographs were taken, but assert that they were there in lawful exercise of their right while on official leave or scheduled off-duty, or in the alternative, that they were already dismissed from service as early as June 7, 1998 and their presence at the strike area thereafter was already irrelevant. The Court further concurs in the observation of the NLRC that the official leave or scheduled off-duty of Rodriguez, *et al.* expired at least two weeks prior to June 26, 1998, yet they did not make any effort to return to work before said date. Rodriguez, *et al.* instead heeded the advice of their lawyer to report *en masse* with the

---

[44] *Rollo* (G.R. No. 178501), pp. 428-440.

[45] *Rabago v. National Labor Relations Commission,* G.R. Nos. 82868 and 82932, August 5, 1991, 200 SCRA 158, 165.

other ALPAP members, only proving that they were complying not with the Return-to-Work Order of the DOLE Secretary but the orders of their union and its counsel.

There is no compelling reason for the Court to disturb the findings of the NLRC as to Baquiran and Jadie, the two pilots who did not sign the logbook.

To stress, the Return-to-Work Order was served on ALPAP on June 8, 1998, and its members had 24 hours or until June 9, 1998 to report back for work. There is no evidence that Baquiran complied, or at least, attempted to comply with said Order. Neither did Baquiran report back for work with the other ALPAP members on June 26, 1998. Baquiran, who made no attempt to report for work at all, cannot be in a better position than the other ALPAP members who belatedly reported for work on June 26, 1998 and were still deemed to have lost their employment. As the NLRC declared, Baquiran "simply abandoned his job."

Only Jadie among Rodriguez, *et al.,* was illegally dismissed by PAL. During the strike, Jadie was already on maternity leave. Jadie did not join the strike and could not be reasonably expected to report back for work by June 9, 1998 in compliance with the Return-to-Work Order. Indeed, Jadie gave birth on June 24, 1998. However, as both the NLRC and the Court of Appeals had held, Jadie can no longer be reinstated for the following reasons: (1) Jadie's former position as Captain of the E-50 aircraft no longer existed as said aircraft was already returned to its lessors in accordance with the Amended and Restated Rehabilitation Plan of PAL; (2) Per ATO certification, Jadie's license expired in 1998; (3) the animosity between the parties as engendered by the protracted and heated litigation; (4) the possibility that Jadie had already secured equivalent or other employment after the significant lapse of time since the institution of the Illegal Dismissal Case; and (5) the nature of the business of PAL which requires the continuous operations of its planes and, thus, the hiring of new pilots. In lieu of reinstatement, Jadie is entitled to separation pay.

Following latest jurisprudence,[46] Jadie is entitled to the following reliefs/awards for her illegal dismissal: (1) separation pay equivalent to one month salary for every year of service in lieu of reinstatement; (2) backwages from June 9, 1998; (3) longevity pay at ₱500.00/month for every year of service based on seniority date falling after June 9, 1998; (4) Christmas bonuses; (5) Jadie's proportionate share in the ₱5 Million contribution of PAL to the Retirement Fund; and (5) cash equivalent of vacation leaves and sick leaves which Jadie earned after June 9, 1998. All of the aforementioned awards shall be computed until finality of this Decision.

Jadie is further entitled to receive benefits due her even prior to her illegal dismissal on June 9, 1998, namely: (1) unpaid salaries for June 1 to 8, 1998; and (2) productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1 to 8, 1998.

All monetary awards due Jadie shall earn legal interest of 6% per annum from date of finality of this Decision until fully paid.

Finally, the Court acts upon the Motion for Leave to Reinstate Elmer F. Peña, Antonio P. Noble, Baltazar B. Musong, Nicomen H. Versoza and Ryan Jose C. Hinayon as Petitioners in G.R. No. 178501. Peña, Noble, Musong, Versoza, and Hinayon, hereinafter referred to collectively as Peña, *et al.,* were among the original complainants in the Illegal Dismissal Case before the Labor Arbiter. However, Peña, *et al.* were unable to join as petitioners in the Petition for *Certiorari* before the Court of Appeals in CA-G.R. SP No. 71190, as well as the present Petition in G.R. No. 178501, because at the time said Petitions were filed, they were already employed outside the country. The Court denies the Motion. When Peña, *et al.* failed to join the Petition in CA-G.R. SP No. 71190, the Decision dated November 6, 2001 of the NLRC in NLRC NCR CA No. 027348-01 had

---

[46] *Bani Rural Bank, Inc. v. De Guzman,* G.R. No.170904, November 13, 2013, 709 SCRA 330; *Lim v. HMR Philippines, Inc.,* G.R. No. 201483, August 4, 2014, 731 SCRA 576.

become final and executory as to them. Peña, *et al.* cannot simply be "reinstated" as petitioners in G.R. No. 178501 since they are not parties to and had no legal interest in the appealed Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. SP No. 71190.

**WHEREFORE,** premises considered, judgment is hereby rendered:

(1) **DISMISSING** the Petition of Rodriguez, *et al.,* in G.R. No. 178501 and **PARTLY GRANTING** the Petition of PAL in G.R. No. 178510;

2) **REVERSING** and **SETTING ASIDE** the Decision dated November 30, 2006 of the Court of Appeals in CA-G.R. SP No. 71190;

(3) **DECLARING** that Jadie was illegally dismissed and **ORDERING** PAL to pay her the following:

(a) As consequences of her illegal dismissal: (i) separation pay equivalent to one (1) month salary for every year of service in lieu of reinstatement; (ii) backwages from June 9, 1998; (iii) longevity pay at ₱500.00/month for every year of service based on seniority date falling after June 9, 1998; (iv) Christmas bonuses from 1998; (v) Jadie's proportionate share in the ₱5 Million contribution of PAL to the Retirement Fund; and (vi) cash equivalent of vacation leaves and sick leaves which Jadie earned after June 9, 1998, all of which shall be computed until finality of this Decision;

(b) Benefits due her prior to her illegal dismissal on June 9, 1998: (i) unpaid salaries for June 1 to 8, 1998; and (ii) productivity allowance, transportation allowance, and rice subsidy for May 1998 and June 1 to 8, 1998; and

(c) Legal interest of 6% per annum on all monetary awards due her from the date of finality of this Decision until full payment thereof;

(4) **DISMISSING** for lack of merit the Complaint for Illegal Dismissal of Rodriguez, Alisangco, Benjamin T. Ang, Vicente P. Ang, Arroyo, Baquiran, Wilfredo S. Cruz, Delos Reyes, Ecarma, Galisim, Garcia, Gutiza, Jose, Labuga, Lastimoso,

Matias, Maturan, Ocharan, Piamonte, Sabado, Sanchez, Corpus, and Alcañeses; and

(5) **DENYING** the Motion for Leave to Reinstate Elmer F. Peña, Antonio P. Noble, Baltazar B. Musong, Nicomen H. Versoza and Ryan Jose C. Hinayon as Petitioners in G.R. No. 178501.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R. No. 188213. January 11, 2016]

**NATIVIDAD C. CRUZ and BENJAMIN DELA CRUZ,** *petitioners, vs.* **PANDACAN HIKER'S CLUB, INC., Represented by its President, PRISCILA ILAO,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; NUISANCE; UNLESS A NUISANCE IS A NUISANCE *PER SE*, IT MAY NOT BE SUMMARILY ABATED; NUISANCE, CONSTRUED.—** This Court has ruled time and again that no public official is above the law. The Court of Appeals correctly ruled that although petitioners claim to have merely performed an abatement of a public nuisance, the same was done summarily while failing to follow the proper procedure therefor and for which, petitioners must be held administratively liable. Prevailing jurisprudence holds that unless a nuisance is a nuisance *per se,* it may not be summarily abated. There is a nuisance when there is "any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or

disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property." But other than the statutory definition, jurisprudence recognizes that the term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.

**2. ID.; ID.; CLASSIFICATION OF NUISANCE, EXPLAINED.—** A nuisance is classified in two ways: (1) according to the object it affects; or (2) according to its susceptibility to summary abatement. As for a nuisance classified according to the object or objects that it affects, a nuisance may either be: (a) a public nuisance, *i.e.,* one which "affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal"; or (b) a private nuisance, or one "that is not included in the foregoing definition" which, in jurisprudence, is one which "violates only private rights and produces damages to but one or a few persons." A nuisance may also be classified as to whether it is susceptible to a legal summary abatement, in which case, it may either be: (a) a nuisance *per se,* when it affects the immediate safety of persons and property, which may be summarily abated under the undefined law of necessity; or, (b) a nuisance *per accidens*, which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance"; it may only be so proven in a hearing conducted for that purpose and may not be summarily abated without judicial intervention.

**3. ID.; ID.; THE ABATEMENT, INCLUDING WITHOUT JUDICIAL PROCEEDINGS, OF A PUBLIC NUISANCE IS THE RESPONSIBILITY OF THE DISTRICT HEALTH OFFICER.—** Under Article 700 of the Civil Code, the abatement, including one without judicial proceedings, of a public nuisance is the responsibility of the district health officer. Under Article 702 of the Code, the district health officer is also the official who shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance. The two articles do not mention that the chief executive

of the local government, like the Punong Barangay, is authorized as the official who can determine the propriety of a summary abatement.

**4. POLITICAL LAW; POWERS OF THE STATE; POLICE POWER; POLICE POWER IS VESTED PRIMARILY WITH THE NATIONAL LEGISLATURE, WHICH MAY DELEGATE THE SAME TO LOCAL GOVERNMENTS THROUGH THE ENACTMENT OF ORDINANCES THROUGH THEIR LEGISLATIVE BODIES; ELUCIDATED.—** The prevailing jurisprudence is that local government units such as the provinces, cities, municipalities and barangays exercise police power through their respective legislative bodies. The general welfare clause provides for the exercise of police power for the attainment or maintenance of the general welfare of the community. The power, however, is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights. Jurisprudence defines police power as the plenary power ***vested in the legislature*** to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people. The Latin maxim is *salus populi est suprema lex* (the welfare of the people is the supreme law). Police power is vested primarily with the national legislature, which may delegate the same to local governments through the enactment of ordinances through their legislative bodies (the *sanggunians*). The so-called general welfare clause, provided for in Section 16 of the Local Government Code, provides for such delegation of police power. x x x Flowing from this delegated police power of local governments, a local government unit like Barangay 848, Zone 92 in which petitioners were public officials, exercises police power through its legislative body, in this case, its *Sangguniang Barangay*. Particularly, the ordinances passed by the *sanggunian* partly relate to the general welfare of the barangay, as also provided for by the Local Government Code. x x x Even the powers granted to the *punong barangay* consist mainly of executing only those laws and ordinances already enacted by the legislative bodies, including the said official's own *sangguniang barangay*.

**APPEARANCES OF COUNSEL**

*Salinas Tan Libranda & Oneza Law Offices* for petitioners.
*Eduardo E. Francisco* for 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 annul and set aside the Court of Appeals Decision[1] dated March 31,2008 in CA-G.R. SP. No. 104474. The appellate court reversed and set aside the earlier decision of the Office of the Ombudsman dismissing the complaint filed against petitioners.

Below are the facts of the case.

Petitioner Natividad C. Cruz *(Cruz)* was *Punong Barangay* or Chairperson of Barangay 848, Zone 92, City of Manila.[2] On November 10, 2006, around five o'clock in the afternoon, and along Central Street, Pandacan, Manila, within the vicinity of her barangay, she allegedly confronted persons playing basketball with the following statements:

*Bakit nakabukas ang (basketball) court? Wala kayong karapatang maglaro sa court na 'to, barangay namin ito! xxx xxx xxx Wala kayong magagawa. Ako ang chairman dito. Mga walanghiya kayo, patay gutom! Hindi ako natatakot! Kaya kong panagutan lahat!*[3]

Then, she allegedly gave an order to the other petitioner, *Barangay Tanod* Benjamin dela Cruz *(Dela Cruz),* to destroy the basketball ring by cutting it up with a hacksaw which Dela

---

[1] Penned by Associate Justice (now Presiding Justice) Andres B. Reyes, Jr., with Associate Justices Jose C. Reyes Jr. and Normandie B. Pizarro, concurring; *rollo,* pp. 69-73.

[2] *Id*. at 7, 33.

[3] *Id.* at 33-34.

Cruz promptly complied with, thus, rendering the said baketball court unusable.[4]

The acts of petitioners prompted the filing of a Complaint (for Malicious Mischief, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Abuse of Authority)[5] before the Prosecutor's Office and the Office of the Ombudsman by the group that claims to be the basketball court's owners, herein respondents Pandacan Hiker's Club, Inc. *(PHC*) and its president Priscila Ilao *(Ilao).* In the complaint, they alleged that PHC, a non-stock, non-profit civic organization engaged in "health, infrastructure, sports and other so-called poverty alleviation activities" in the Pandacan area of Manila, is the group that had donated, administered and operated the subject basketball court for the Pandacan community until its alleged destruction by petitioners.[6]

The complaint averred that the damage caused by petitioners was in the amount of around ₱2,000.00. It was supported by the affidavits of ten (10) members of PHC who allegedly witnessed the destruction. Meanwhile, respondent Ilao added that the acts of petitioner Cruz, the Barangay Chairperson, of ordering the cutting up of the basketball ring and uttering abusive language were "unwarranted and unbecoming of a public officia1."[7]

In answer to the complaint, Cruz alleged that the basketball court affected the peace in the barangay and was the subject of many complaints from residents asking for its closure. She alleged that the playing court blocked jeepneys from passing through and was the site of rampant bettings and fights involving persons from within and outside the barangay. She claimed that innocent persons have been hurt and property had been damaged by such armed confrontations, which often involved the throwing of rocks and improvised "molotov" bombs. She also averred that noise from the games caused lack of sleep among some residents

[4] *Id.* at 34, 36.

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

[6] *Id.* at 33.

[7] *Id.* at 34-35.

and that the place's frequent visitors used the community's fences as places to urinate. Cruz maintained that the court's users never heeded the barangay officials' efforts to pacify them and when the basketball ring was once padlocked, such was just removed at will while members of the complainants' club continued playing. When Cruz asked for the PHC to return the steel bar and padlock, the request was simply ignored, thus, prompting her to order De a Cruz to destroy the basketball ring. The destruction was allegedly also a response to the ongoing clamor of residents to stop the basketball games.[8] Cruz denied allegations that she shouted invectives at the PHC members. In support of her answer, Cruz attached copies of the complaints, a "certification" and letters of barangay residents asking for a solution to the problems arising from the disruptive activities on the said playing venue.[9]

After the parties' submission of their respective Position Papers,[10] the Office of the Ombudsman rendered "its Decision[11] dated April 26, 2007 dismissing the complaint filed by Ilao, *et al.* The Ombudsman found that the act of destroying the basketball ring was only motivated by Cruz and Dela Cruz performing their sworn duty, as defined in the Local Government Code.[12] It found the act to be a mere response to the clamor of

---

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

[9] *Id.* at 37, 83-118.

[10] *Id.* at 121-124 (Cruz, *et al.'s* Position Paper), 125-136 (Ilao, *et al.'s* Position Paper).

[11] Penned by Graft Investigation and Prosecution Officer I Rachel T. Cariaga-Favila, with the approval of Ombudsman Maria Merceditas N. Gutierrez dated January 25, 2008; *id* at 137-149.

[12] LOCAL GOVERNMENT CODE (R.A. No. 7160) Section 389. The Chief Executive; Powers, Duties and Functions.- x x x (b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) **Enforce all laws and ordinances** which are applicable within the barangay;

x x x x x x x x x

constituents.[13] The office found that though the cutting of the ring was "drastic," it was done by the barangay officials within their lawful duties, as the act was only the result of the unauthorized removal of and failure to return the steel bar and padlock that were earlier placed thereon.[14] Neither did the office give credence to the allegation that Cruz uttered invectives against the complainants' witnesses, noting that the said witnesses are tainted by their personal animosity against the barangay officials.[15]

After the Ombudsman's ruling dismissing the complaint filed against Cruz and Dela Cruz, the complainants Ilao, *et al.* filed a petition for review before the Court of Appeals praying for the latter court to nullify the Ombudsman's decision.[16] The petition's thesis was that any actions in furtherance of the community's welfare must be approved by ordinance and that unless a thing is a nuisance *per se,* such a thing may not be abated via an ordinance and extrajudicially.[17]

Commenting on the petition for review, the Office of the Ombudsman, through the Office of the Solicitor General, averred that Section 389 of the Local Government Code, which defines the powers, duties and functions of the *punong barangay,* among which are the power to enforce all laws and ordinances applicable within the barangay and the power to maintain public order in the barangay and, in pursuance thereof, to assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions, does not require an ordinance for the said official to perform said functions.[18] The acts were also

---

(3) **Maintain public order** in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions; x x x *id.* at 144-145. (Emphasis supplied)

[13] *Id.* at 145.

[14] *Id.* at 147.

[15] *Id.* at 148.

[16] *Id.* at 164-173.

[17] *Id.* at 171.

[18] *Id.* at 209.

in pursuance of the promotion of the general welfare of the community, as mentioned in Section 16 of the Code.[19]

In its assailed Decision dated March 31, 2008, the Court of Appeals reversed and set aside the decision of the Office of the Ombudsman. The appellate court found petitioner Natividad C. Cruz liable for conduct prejudicial to the best interest of the service and penalized her with a suspension of six (6) months and one (1) day, while it reprimanded the other petitioner Benjamin dela Cruz, and also warned both officials that a future repetition of the same or similar acts will be dealt with more severely.

The appellate court sustained the contentions of Ilao, *et al.* that Cruz and Dela Cruz performed an abatement of what they thought was a public nuisance but did the same without following the proper legal procedure, thus making them liable for said acts.[20] It held Cruz to be without the power to declare a thing a nuisance unless it is a nuisance *per se.*[21] It declared the subject basketball ring as not such a nuisance and, thus, not subject to summary abatement. The court added that even if the same was to be considered a nuisance *per accidens,* the only way to establish it as such is after a hearing conducted for that purpose.[22]

A motion for reconsideration filed by Cruz and Dela Cruz was likewise denied by the appellate court.[23] Hence, they filed this petition.

Petitioners maintain that they acted merely with the intention to regain free passage of people and vehicles over the street and restore the peace, health and sanitation of those affected by the basketball court. Cruz, in particular, asserts that she merely abated a public nuisance which she claimed was within her

---

[19] *Id.*

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

[21] *Id.* at 44.

[22] *Id.* at 45.

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

power as barangay chief executive to perform and was part of her duty to maintain peace and order.[24]

We deny the petition.

Under normal circumstances, this Court would not disturb the findings of fact of the Office of the Ombudsman when they are supported by substantial evidence.[25] However, We make an exception of the case at bar because the findings. of fact of the Ombudsman and the Court of Appeals widely differ.[26]

It is held that the administrative offense of conduct prejudicial to the interest of the service is committed when the questioned conduct tarnished the image and integrity of the officer's public office; the conduct need not be related or connected to the public officer's official functions for the said officer to be meted the corresponding penalty.[27] The basis for such liability is Republic Act No. 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees,* particularly Section 4 (c) thereof, which ordains that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.[28] In one case, this Court also stated that the *Machiavellian* principle that "the end justifies the means" has no place in government service, which thrives on the rule of law, consistency and stability.[29]

For these reasons, in the case at bar, We agree with the appellate court that the petitioners' actions, though well-intentioned, were improper and done in excess of what was

---

[24] *Id.* at 23.

[25] *Tolentino v. Loyola,* 670 Phil. 50, 62 (2011).

[26] *Office of the Ombudsman v. Bernardo,* G.R. No. 181598, March 6, 2013, 692 SCRA 557, 567.

[27] *Largo v. Court of Appeals,* 563 Phil. 293, 305 (2007).

[28] *Id.; Avenido v. Civil Service Commission,* 576 Phil. 654, 662 (2008).

[29] *National Power Corporation v. Olandesca,* 633 Phil. 278, 291 (2010).

required by the situation and fell short of the aforementioned standards of behavior for public officials.

It is clear from the records that petitioners indeed cut or sawed in half the subject basketball ring, which resulted in the destruction of the said equipment and rendered it completely unusable.[30] Petitioners also moved instantaneously and did not deliberate nor consult with the *Sangguniang Barangay* prior to committing the subject acts; neither did they involve any police or law enforcement agent in their actions. They acted while tempers were running high as petitioner Cruz, the Barangay Chairperson, became incensed at the removal of the steel bar and padlock that was earlier used to close access to the ring and at the inability or refusal of respondents' group to return the said steel bar and padlock to her as she had ordered.

The destructive acts of petitioners, however, find no legal sanction. This Court has ruled time and again that no public official is above the law.[31] The Court of Appeals correctly ruled that although petitioners claim to have merely performed an abatement of a public nuisance, the same was done summarily while failing to follow the proper procedure therefor and for which, petitioners must be held administratively liable.

Prevailing jurisprudence holds that unless a nuisance is a nuisance *per se,* it may not be summarily abated.[32]

There is a nuisance when there is "any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street, or any

---

[30] *Rollo,* pp. 134,154.

[31] *Cruz v. Villar,* 427 Phil. 229, 234 (2002); *Hernandez v. Aribuabo,* 400 Phil. 763, 766 (2000).

[32] *Rana v. Wong,* G.R. No. 192861, June 30, 2014, 727 SCRA 539, 553; *Perez v. Spouses Madrona,* G.R. No. 184478, March 21, 2012, 668 SCRA 696, 706-707.

body of water; or (5) hinders or impairs the use of property."[33] But other than the statutory definition, jurisprudence recognizes that the term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.[34]

A nuisance is classified in two ways: (1) according to the object it affects; or (2) according to its susceptibility to summary abatement.

As for a nuisance classified according to the object or objects that it affects, a nuisance may either be: (a) a public nuisance, *i.e.,* one which "affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal"; or (b) a private nuisance, or one "that is not included in the foregoing definition" which, in jurisprudence, is one which "violates only private rights and produces damages to but one or a few persons."[35]

A nuisance may also be classified as to whether it is susceptible to a legal summary abatement, in which case, it may either be: (a) a nuisance *per se,* when it affects the immediate safety of persons and property, which may be summarily abated under the undefined law of necessity;[36] or, (b) a nuisance *per accidens,* which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance;"[37] it may only

---

[33] CIVIL CODE, Art. 694.

[34] *Smart Communications, Inc. v. Aldecoa,* G.R. No. 166330, September 11, 2013, 705 SCRA 392, 422.

[35] *Rana v. Wong, supra* note 32, at 553, citing *AC Enterprises, Inc. v. Frabelle Properties Corp.,* 537 Phil. 114, 143 (2006).

[36] *Perez v. Spouses Madrona, supra,* quoting *Monteverde v. Generoso,* 52 Phil. 123 (1982).

[37] *Rana v. Wong, supra* note 32, citing *Salao v. Santos,* 67 Phil. 547, 550-551 (1939).

be so proven in a hearing conducted for that purpose and may not be summarily abated without judicial intervention.[38]

In the case at bar, none of the tribunals below made a factual finding that the basketball ring was a nuisance *per se* that is susceptible to a summary abatement. And based on what appears in the records, it can be held, at most, as a mere nuisance *per accidens,* for it does not pose an ***immediate*** effect upon the safety of persons and property, the definition of a nuisance *per se.* Culling from examples cited in jurisprudence, it is unlike a mad dog on the loose, which may be killed on sight because of the immediate danger it poses to the safety and lives of the people; nor is it like pornographic materials, contaminated meat and narcotic drugs which are inherently pernicious and which may be summarily destroyed; nor is it similar to a filthy restaurant which may be summarily padlocked in the interest of the public health.[39] A basketball ring, by itself, poses no immediate harm or danger to anyone but is merely an object of recreation. Neither is it, by its nature, injurious to rights of property, of health or of comfort of the community and, thus, it may not be abated as a nuisance without the benefit of a judicial hearing.[40]

But even if it is assumed, *ex gratia argumenti,* that the basketball ring was a. nuisance *per se,* but without posing any immediate harm or threat that required instantaneous action, the destruction or abatement performed by petitioners failed to observe the proper procedure for such an action which puts the said act into legal question.

Under Article 700 of the Civil Code, the abatement, including one without judicial proceedings, of a public nuisance is the responsibility of the district health officer. Under Article 702 of the Code, the district health officer is also the official who shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance. The

---

[38] *City of Manila v. Laguio,* 495 Phil. 289, 334 (2005); *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.,* 492 Phil. 314, 327 (2005).

[39] *Ynot v. Intermediate Appellate Court,* 232 Phil. 615, 625 (1987).

[40] *Estate of Francisco v. Court of Appeals,* 276 Phil. 649, 655 (1991).

two articles do not mention that the chief executive of the local government, like the Punong Barangay, is authorized as the official who can determine the propriety of a summary abatement.

Further, both petitioner Cruz, as Punong Barangay, and petitioner Dela Cruz, as Barangay Tanod, claim to have acted in their official capacities in the exercise of their powers under the general welfare clause of the Local Government Code. However, petitioners could cite no barangay nor city ordinance that would have justified their summary abatement through the exercise of police powers found in the said clause. No barangay nor city ordinance was violated; neither was there one which specifically declared the said basketball ring as a nuisance *per se* that may be summarily abated. Though it has been held that a nuisance *per se* may be abated via an ordinance, without judicial proceedings,[41] We add that, in the case at bar, petitioners were required to justify their abatement via such an ordinance because the power they claim to have exercised – the police power under the general welfare clause – is a power exercised by the government mainly through its legislative, and not the executive, branch. The prevailing jurisprudence is that local government units such as the provinces, cities, municipalities and barangays exercise police power through their respective legislative bodies.[42]

The general welfare clause provides for the exercise of police power for the attainment or maintenance of the general welfare of the community. The power, however, is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights.[43] Jurisprudence defines police power as the plenary power ***vested in the legislature*** to make statutes and ordinances to promote

---

[41] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc., supra* note 38, at 327.

[42] *Metropolitan Manila Development Authority v. Garin,* 496 Phil. 82, 92 (2005); *City of Manila v. Laguio, supra* note 38, at 319.

[43] *Gallego v. People,* 118 Phil. 815, 819 (1963), citing *Primicias v. Fugoso,* 80 Phil. 71 (1948).

the health, morals, peace, education, good order or safety and general welfare of the people.[44] The Latin maxim is *salus populi est suprema lex* (the welfare of the people is the supreme law).[45] Police power is vested primarily with the national legislature, which may delegate the same to local governments through the enactment of ordinances through their legislative bodies (the *sanggunians).*[46] The so-called general welfare clause, provided for in Section 16 of the Local Government Code, provides for such delegation of police power, to wit:

> Section 16. *General Welfare.* Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Flowing from this delegated polic power of local governments, a local government unit like Barangay 848, Zone 92 in which petitioners were public officials, exercises police power through its legislative body, in this case, its *Sangguniang Barangay.*[47] Particularly, the ordinances passed by the *sanggunian* partly relate to the general welfare of the barangay, as also provided for by the Local Government Code as follows:

---

[44] *Social Justice Society v. Atienza,* 568 Phil. 658, 700 (2008).

[45] *JMM Promotion and Management, Inc. v. Court of Appeals,* 329 Phil. 87, 93 (1996).

[46] *Metropolitan Manila Development Authority, v. Bel-Air Village Association, Inc.,* 385 Phil. 586, 603 (2000): *Gallego v. People, supra* note 43: *Acebedo Optical Company, Inc. v. Court of Appeals,* 385 Phil. 956, 968-969 (2000).

[47] *Social Justice Society v. Atienza, supra* note 44.

Section 391. *Powers, Duties, and Functions.* –

(a) The sangguniang barangay, as the legislative body of the barangay, shall:

(1) **Enact ordinances as may be necessary** to discharge the responsibilities conferred upon it by law or ordinance and **to promote the general welfare** of the inhabitants therein; (emphasis supplied)

Even the powers granted to the *punong barangay* consist mainly of executing only those laws and ordinances already enacted by the legislative bodies, including the said official's own *sangguniang barangay*, to wit:

Section 389. *Chief Executive: Powers, Duties, and Functions.* –

(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the **purpose of which is the general welfare** of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) **Enforce all laws and ordinances** which are applicable within the barangay;

x x x x x x x x x

(3) **Maintain public order** in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;

x x x x x x x x x

(14) **Promote the general welfare** of the barangay;

(15) Exercise such other powers and perform such **other duties** and functions as may be **prescribed by law or ordinance**.[48]

Clearly, the complete destruction of the basketball ring by the petitioners is justified neither by law or ordinance nor even by

---

[48] Emphasis supplied.

equity or necessity, which makes the act illegal and petitioners liable. And even as an action to maintain public order, it was done excessively and was unjustified. Where a less damaging action, such as the mere padlocking, removal or confiscation of the ring would have sufficed, petitioners resorted to the drastic measure of completely destroying and rendering as unusable the said ring, which was a private property, without due process. Such an act went beyond what the law required and, in being so, it tarnished the image and integrity of the offices held by petitioners and diminished the public's confidence in the legal system. Petitioners who were public officials should not have been too earnest at what they believed was an act of restoring peace and order in the community if in the process they would end up disturbing it themselves. They cannot break the law that they were duty-bound to enforce. Although the Court bestows sympathy to the numerous constituents who allegedly complained against the basketball court to petitioners, it cannot legally agree with the methods employed by the said officials. Their good intentions do not justify the destruction of private property without a legal warrant, because the promotion of the general welfare is not antithetical to the preservation of the rule of law.[49] Unlike the examples cited earlier of a mad dog on the loose, pornography on display or a filthy restaurant, which all pose ***immediate*** danger to the public and, therefore, could be addressed by anyone on sight, a basketball ring as a nuisance poses no such urgency that could have prevented petitioners from exercising any form of deliberation or circumspection before acting on the same.

Petitioners do not claim to have acted in their private capacities but in their capacities as public officials, thus, they are held administratively liable for their acts. And even in their capacities as private individuals who may have abated a public nuisance, petitioners come up short of the legal requirements. They do not claim to have complied with any of the requisites laid down in Article 704 of the Civil Code, to wit:

---

[49] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc., supra* note 46 at 622.

Art. 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

(1) That demand be first made upon the owner or possessor of the property to abate the nuisance;

(2) That such demand has been rejected;

(3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and

(4) That the value of the destruction does not exceed three thousand pesos.

**WHEREFORE,** premises considered, the petition is **DENIED.** The Court of Appeals Decision dated March 31, 2008 in CA-GR. SP. No. 104474 is **AFFIRMED.**

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R. No. 191033. January 11, 2016]

**THE ORCHARD GOLF & COUNTRY CLUB, INC., EXEQUIEL D. ROBLES, CARLO R.H. MAGNO, CONRADO L. BENITEZ II, VICENTE R. SANTOS, HENRY CUA LOPING, MARIZA SANTOS-TAN, TOMAS B. CLEMENTE III, and FRANCIS C. MONTALLANA,** *petitioners, vs.* **ERNESTO V. YU and MANUEL C. YUHICO,** *respondents.*

## SYLLABUS

1. **REMEDIAL LAW; APPEALS; PERIOD FOR PERFECTING AN APPEAL; PROCEDURAL RULES MAY BE WAIVED OR DISPENSED WITH IN ORDER TO SERVE AND ACHIEVE SUBSTANTIAL JUSTICE; CASE AT BAR.—** In general, procedural rules setting the period for perfecting an appeal or filing a petition for review are inviolable considering that appeal is not a constitutional right but merely a statutory privilege and that perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictional. However, procedural rules may be waived or dispensed with in order to serve and achieve substantial justice. Relaxation of the rules may be had when the appeal, on its face, appears to be absolutely meritorious or when there are persuasive or compelling reasons to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure. Notably, under A.M. No. 04-9-07-SC (Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission), while the petition for review under Rule 43 of the Rules should be filed within fifteen (15) days from notice of the decision or final order of the RTC, the CA may actually grant an additional period of fifteen (15) days within which to file the petition and a further extension of time not exceeding fifteen (15) days for the most compelling reasons. This implies that the reglementary period is neither an impregnable nor an unyielding rule.

2. **CIVIL LAW; DAMAGES; THERE IS NO FACTUAL AND LEGAL BASIS TO GRANT MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COST OF SUIT IF THE DAMAGE SUFFERED PARTAKES OF THE NATURE OF *DAMNUM ABSQUE INJURIA*; PRESENT IN CASE AT BAR.—** Respondents were suspended in accordance with the procedure set forth in the Club's By-laws. There is no merit on their insistence that their suspension is invalid on the ground that the affirmative vote of eight (8) members is required to support a decision suspending or expelling a Club member. Both the provisions of Articles of Incorporation and By-Laws of the Club expressly limit the number of directors to seven (7); hence, the provision on suspension and expulsion of a member which requires the affirmative vote of eight (8) members

is obviously a result of an oversight. x x x Lastly, contrary to respondents' position, the recommendation of the House Committee to suspend a Club member is not a pre-requisite. Section 1, Article XIV, not Section 2 (b), Article XI, of the By-Laws governs as it outlines the procedure for the suspension of a member. Even assuming that the recommendation of the House Committee is mandatory, respondents failed to prove, as a matter of fact, that petitioners acted in bad faith in relying on the subject provision, which employs the permissive word *"may"* in reference to the power of the House Committee to recommend anytime the suspension of a Club member. Way different from the trial court's findings, there is, therefore, no factual and legal basis to grant moral and exemplary damages, attorney's fees and costs of suit in favor of respondents. The damages suffered, if there are any, partake of the nature of a *damnum absque injuria*. x x x "One who makes use of his own legal right does no injury. *Qui jure suo utitur nullum damnum facit*. If damage results from a person's exercising his legal rights, it is *damnum absque injuria*." In this case, respondents failed to prove by preponderance of evidence that there is fault or negligence on the part of petitioners in order to oblige them to pay for the alleged damage sustained as a result of their suspension as Club members. Certainly, membership in the Club is a privilege. Regular members are entitled to use all the facilities and privileges of the Club, subject to its rules and regulations. As correctly pointed out by petitioners, the mental anguish respondents experienced, assuming to be true, was brought upon them by themselves for deliberately and consciously violating the rules and regulations of the Club. Considering that respondents were validly suspended, there is no reason for the Club to compensate them. Indeed, the penalty of suspension provided for in Section 1, Article XIV of the By-Laws is a means to protect and preserve the interest and purposes of the Club. This being so, the suspension of respondents does not fall under any of the provisions of the Civil Code pertaining to the grant of moral and exemplary damages, attorney's fees, and litigation costs.

**APPEARANCES OF COUNSEL**

*Sebastian Liganor Galinato & Alamis* for petitioners.
*Esguerra & Blanco* for respondent *Ernesto V. Yu.*
*Atilano S. Guevarra, Jr.,* for respondent *Manuel C. Yuhico.*

## D E C I S I O N

**PERALTA, *J.*:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse the Resolutions dated September 16, 2009[1] and January 21, 2010[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 106918, which reconsidered and set aside its Resolution dated January 15, 2009[3] granting petitioners a 15-day period within which to file a petition for review under Rule 43 of the Rules.

The present case is a continuation of *Yu v. The Orchard Gold & Country Club, Inc.*[4] decided by this Court on March 1, 2007. For brevity, the relevant facts narrated therein are quoted as follows:

> On May 28, 2000, a Sunday, [respondents] Ernesto Yu and Manuel Yuhico went to the Orchard Golf & Country Club to play a round of golf with another member of the club. At the last minute, however, that other member informed them that he could not play with them. Due to the "no twosome" policy of the Orchard contained, in the membership handbook prohibiting groups of less than three players from teeing off on weekends and public holidays before 1:00 p.m., [respondents] requested management to look for another player to join them.
>
> Because [Orchard] were unable to find their third player, [respondent] Yu tried to convince Francis Montallana, Orchard's

---

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Noel G. Tijam and Jose C. Reyes, Jr., concurring; *rollo,* pp. 90-96.

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

[3] *Id.* at 526.

[4] 546 Phil. 1 (2007).

assistant golf director, to allow them to play twosome, even if they had to tee off from hole no. 10 of the Palmer golf course. Montallana refused, stating that the flights which started from the first nine holes might be disrupted. [Respondent] Yu then shouted invectives at Montallana, at which point he told [respondent] Yuhico that they should just tee off anyway, regardless of what management's reaction would be. [Respondents] then teed off. without permission from Montallana. They were thus able to play, although they did so without securing a tee time control slip before teeing off, again in disregard of a rule in the handbook. As a result of [respondents'] actions, Montallana filed a report on the same day with the board of directors (the board).

In separate letters dated May 31, 2000, the board, through [petitioner] Clemente, requested [respondents] to submit their written comments on Montallana's incident report dated May 28, 2000. The report was submitted for the consideration of the board.

Subsequently, on June 29, 2000, the board resolved to suspend [respondents] from July 16 to October 15, 2000, and served notice thereof on them.

On July 11, 2000, [respondents] filed separate petitions for injunction with application for temporary restraining order (TRO) and/or preliminary injunction with the Securities Investigation and Clearing Department (SICD) of the Securities and Exchange Commission (SEC), at that time the tribunal vested by law with jurisdiction to hear and decide intra-corporate controversies. The cases, in which [respondents] assailed the validity of their suspension, were docketed as SEC Case Nos. 07-00- 6680 and 07-00-6681. They were eventually consolidated.

After a joint summary hearing on the aforesaid petitions, the SEC-SICD, on July 14, 2000, issued a TRO effective for 20 days from issuance, restraining and enjoining [petitioners], their agents or representatives from implementing or executing the suspension of [respondents].

On August 1, 2000, the SEC *en banc* issued its "Guidelines on Intra-Corporate Cases Pending Before the SICD and the Commission *En Bane* of the Securities and Exchange Commission" (guidelines). Sections 1 and 2 of these guidelines provided:

> Section 1. Intra-corporate and suspension of payments or rehabilitation cases may still be filed with the Securities and

> Exchange Commission on or before August 8, 2000. However, the parties-litigants or their counsels or representatives shall be advised that the jurisdiction of the Commission over these cases shall be eventually transferred to the Regional Trial Courts upon effectivity of *The Securities Regulation* Code by August 9, 2000.
>
> Section 2. Prayers for temporary restraining order or injunction or suspension of payment order contained in cases filed under the preceding section may be acted upon favorably provided that the effectivity of the corresponding order **shall only be up to August 8, 2000.** Prayers for other provisional remedies shall no longer be acted upon by the Commission. In all these cases, the parties-litigants or their counsels or representatives shall be advised that the said cases will eventually be transferred to the regular courts by August 9, 2000. (Emphasis ours)

After hearing [respondents'] applications for preliminary injunction, the SEC-SICD issued an order dated August 2, 2000 directing the issuance of a writ of preliminary injunction enjoining the individual [petitioners], their agents and representatives from suspending [respondents], upon the latter's posting of separate bonds of ₱40,000. This [respondents) did on August 4, 2000.

On August 7, 2000, the SEC-SICD issued a writ of preliminary injunction against [petitioners] directing them to strictly observe the order dated August 2, 2000.

On October 31, 2000, the board held a special meeting in which it resolved to implement the June 29, 2000 order for the suspension of [respondents] in view of the fact that the writs of injunction issued by the SICD in their respective cases had already [elapsed] on August 8, 2000 under the SEC guidelines.

In separate letters dated December 4, 2000 addressed to each [respondent], [petitioner] Clemente informed them that the board was implementing their suspensions.

On December 12, 2000, [respondents] filed a petition for indirect contempt against [petitioners] in the Regional Trial Court (RTC) of Dasmariñas, Cavite, docketed as Civil Case No. 2228-00.

In an order dated December 13, 2000, the Dasmariñas, Cavite RTC, Branch 90, through Judge Dolores [L.] Español, directed the parties to maintain the "last, actual, peaceable and uncontested state

of things," effectively restoring the writ of preliminary injunction, and also ordered [petitioners] to file their answer to the petition. [Petitioners] did not file a motion for reconsideration but filed a petition for *certiorari* and prohibition with the CA, docketed as CA-G.R. SP No. 62309, contesting the propriety of the December 13, 2000 order of Judge Español. They also prayed for the issuance of a TRO and writ of preliminary injunction.

The CA reversed the Dasmariñas, Cavite RTC in the x x x decision dated August 27, 2001.

In view of the CA's decision in CA-G.R. SP No. 62309, [petitioners] finally implemented [respondents'] suspension.

In the meantime, [respondents] filed a motion *ad cautelam* dated August 30, 2001 in the RTC of Imus, Cavite, Branch 21, praying for the issuance of a TRO and/or writ of injunction to enjoin [petitioners] from implementing the suspension orders. They alleged that neither the CA nor this Court could afford them speedy and adequate relief hence[,] the case in the RTC of Imus, Cavite. The case was docketed as SEC Case Nos. 001-01 and 002-01.

On September 7, 2001, the Imus, Cavite RTC issued a TRO. [Petitioners] filed a motion for reconsideration on September [11,] 2001.

It was after the issuance of this TRO that [respondents] filed, on September 12, 2001, a motion for reconsideration of the CA' s decision in CA-G.R. SP No. 62309. In a resolution dated October 10, 2001, the CA denied [respondents'] motion, prompting them to elevate the matter to this Court via petition for review on *certiorari,* docketed as G.R. No. 150335.

In an order dated September 21, 2001, the Imus, Cavite RTC denied [petitioners'] motion for reconsideration and directed the issuance of a writ of preliminary injunction. This prompted [petitioners] to file another petition for *certiorari* in the Court of Appeals [docketed as CA-G.R. SP No. 67664] which x x x issued [on March 26, 2002] a TRO against the Imus, Cavite RTC, enjoining it from implementing the writ of preliminary injunction.

At this point, [respondents] filed their second petition in this Court, this time a special civil action for *certiorari,* docketed as G.R. No. 152687, which included a prayer for the issuance of a TRO and/or the issuance of a writ of preliminary injunction to restrain the enforcement of the CA-issued TRO.

On May 6, 2002, the Court issued a resolution consolidating G.R. No. 152687 and G.R. No. 150335.

In G.R. No. 150335, the issue for consideration [was] whether Sections 1 and 2 of the SEC guidelines dated August 1, 2000 shortened the life span of the writs of preliminary injunction issued on August 7, 2000 by the SEC-SICD in SEC Case Nos. 07-00-6680 and 07-00-6681, thereby making them effective only until August 8, 2000.

At issue in G.R. No. 152687, on the other hand, [was] whether or not the CA committed grave abuse of discretion amounting to lack of jurisdiction by issuing a TRO against the Imus, Cavite RTC and enjoining the implementation of its writ of preliminary injunction against [petitioners].[5]

On March 1, 2007, the Court denied the petitions in G.R. Nos. 150335 and 152687. In G.R. No. 150335, it was held that the parties were allowed to file their cases before August 8, 2000 but any provisional remedies the SEC granted them were to be effective only until that date. Given that the SEC Order and Writ of Injunction were issued on August 2 and 7, 2000, respectively, both were covered by the guidelines and the stated cut-off date. As to G.R. No. 152687, We ruled that the petition became moot and academic because the TRO issued by the CA on March 26, 2002 already expired, its lifetime under Rule 58 of the Rules being only 60 days, and petitioners themselves admitted that the CA allowed its TRO to elapse.

Meanwhile, per Order dated September 24, 2002 of the Imus RTC, SEC Case Nos. 001-01 and 002-01 were set for pre-trial conference.[6] Trial on the merits thereafter ensued.

On December 4, 2008, the Imus RTC ruled in favor of respondents. The dispositive portion of the Decision[7] ordered:

WHEREFORE, premises considered, the decision of the Club's Board of Directors suspending [respondents] Ernesto V. Yu and Manuel C. Yuhico is hereby declared void and of no effect, and its' *(sic)*

---

[5] *Yu v. The Orchard Gold & Country Club, Inc., supra,* at 4-8.

[6] *Rollo,* pp. 408-409.

[7] *Id.* at 502-509.

enforcement permanently enjoined. The writ of preliminary injunction is hereby declared permanent.

[Petitioners] are hereby directed to jointly and severally pay each of the [respondents] the following amounts:

(a) ₱2,000,000.00 as moral damages;

(b) ₱2,000,000.00 as exemplary damages;

(c) ₱500,000.00 as attorney's fees[;] and

(d) ₱100,000.00 as costs of litigation.

SO ORDERED.[8]

Upon receiving a copy of the Imus RTC Decision on December 22, 2008, petitioners filed a Notice of Appeal accompanied by the payment of docket fees on January 5, 2009.[9] Respondents then filed an Opposition to Notice of Appeal with Motion for Issuance of Writ of Execution,[10] arguing that the December 4, 2008 Decision already became final and executory since no petition for review under Rule 43 of the Rules was filed before the CA pursuant to Administrative Matter No. 04-9-07-SC.

Realizing the mistake, petitioners filed on January 13, 2009 an Urgent Motion for Extension of Time to File a Petition.[11] Before the Imus RTC, they also filed a Motion to Withdraw the Notice of Appeal.[12]

On January 15, 2009, the CA resolved to give petitioners a 15-day period within which to file the petition, but *"[s]ubject to the timeliness of the filing of petitioners' Urgent Motion for Extension of Time to File 'Petition for Review' Under Rule 43 of the Rules of Court dated January 13, 2009."*[13]

---

[8] *Id.* at 509.

[9] *Id.* at 510-514.

[10] *Id.* at 598-601, 611-614.

[11] *Id*. at 515-523.

[12] *Id*. at 524-525.

[13] *Id*. at 526.

Afterwards, on January 21, 2009, petitioners filed a Petition for Review.[14]

In the meantime, respondents filed an Opposition to Petitioners' Urgent Motion.[15] Subsequently, they also filed a motion for reconsideration of the CA's Resolution dated January 15, 2009.[16]

Before the Imus RTC, respondents' motion for execution was granted on February 17, 2009. The trial court opined that the proper appellate mode of review was not filed within the period prescribed by the Rules and that the CA issued no restraining order.[17] On March 2, 2009, the Writ of Execution was issued.[18] Eventually, on March 30, 2009, the Sheriff received the total amount of ₱9,200,000.00, as evidenced by two manager's check payable to respondents in the amount of ₱4,600,000.00 each, which were turned over to respondents' counsel.[19]

On September 16, 2009, the CA granted respondents' motion for reconsideration, setting aside its January 15, 2009 Resolution. It relied on *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan (Atty. Abrenica)*[20] and *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc., (LBP),*[21] which respondents cited in their Opposition to the Urgent Motion and Motion for Reconsideration. Petitioners moved to reconsider,[22] but it was denied on January 21, 2010; hence, this petition.

The Court initially denied the petition, but reinstated the same on October 6, 2010.[23]

---

[14] *Id*. at 529-588.

[15] *Id*. at 589-597.

[16] *Id*. at 602-610.

[17] *Id*. at 619-621.

[18] *Id*. at 622-623.

[19] *Id*. at 632-636, 644.

[20] 534 Phil. 34 (2006).

[21] 562 Phil. 974 (2007).

[22] *Rollo*, pp. 651-703.

[23] *Id.* at 1022, 1107-1108.

We grant the petition.

The cases of *LBP* and *Atty. Abrenica* are inapplicable. In *LBP,* the Court affirmed the CA's denial of the bank's motion for extension of time to file a petition for review. Examination of said case revealed that the bank filed a motion for reconsideration of the trial court's adverse judgment dated March 15, 2006, in violation of Section 8(3), Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799. It was held that the filing of such prohibited pleading did not toll the reglementary period to appeal the judgment *via* a petition for review under Rule 43 of the Rules. Thus, the CA already lacked jurisdiction to entertain the petition which the bank intended to file, much less to grant the motion for extension of time that was belatedly filed on July 25, 2006.

Also, in *Atty. Abrenica,* We found no compelling reasons to relax the stringent application of the rules on the grounds as follows:

*First,* when petitioner received the trial court's consolidated decision on December 16, 2004, A.M. No. 04-9-07-SC was already in effect for more than two months.

*Second,* petitioner had known about the new rules on the second week of January, 2005 when he received a copy of respondents' Opposition (To Defendant's Notice of Appeal) dated January 6, 2005. In their opposition, respondents specifically pointed to the applicability of A.M. No. 04-9-07-SC to the instant case.

*Third,* petitioner originally insisted in his Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal) that the correct mode of appeal was a "notice of appeal."

Petitioner reiterated in his Opposition to respondents' motion for execution dated January 14, 2005 that a notice of appeal was the correct remedy.

*Finally,* petitioner filed his Motion to Admit Attached Petition for Review only on **June 10, 2005,** or almost **eight months** from

the effectivity of A.M. No. 04-9-07-SC on October 15, 2004, after he received the trial court's Order of May 11, 2005.[24]

Unlike *LBP* and *Atty. Abrenica,* petitioners in this case committed an excusable delay of merely seven (7) days. When they received a copy of the Imus RTC Decision on **December 22, 2008,** they filed before the CA an Urgent Motion for Extension of Time to File a Petition on **January 13, 2009.** Meantime, they exhibited their desire to appeal the case by filing a Notice of Appeal before the Imus RTC. Upon realizing their procedural *faux pax,* petitioners exerted honest and earnest effort to file the proper pleading despite the expiration of the reglementary period. In their urgent motion, they candidly admitted that a petition for review under Rule 43 and not a notice of appeal under Rule 41 ought to have been filed. The material dates were also indicated. Hence, the CA was fully aware that the 15-day reglementary period already elapsed when it granted the time to file the petition.

In general, procedural rules setting the period for perfecting an appeal or filing a petition for review are inviolable considering that appeal is not a constitutional right but merely a statutory privilege and that perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictiona1.[25] However, procedural rules may be waived or dispensed with in order to serve and achieve substantial justice.[26] Relaxation of the rules may be had when the appeal, on its face, appears to be absolutely meritorious or when there are persuasive or compelling reasons to relieve a litigant of an

---

[24] *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan, supra* note 20, at 42-43.

[25] *Calipay v. National Labor Relations Commission,* 640 Phil. 458, 466 (2010).

[26] *Philippine National Bank v. Commissioner of Internal Revenue,* 678 Phil. 660, 677 (2011).

injustice not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure.[27]

Notably, under A.M. No. 04-9-07-SC (Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission),[28] while the petition for review under Rule 43 of the Rules should be filed within fifteen (15) days from notice of the decision or final order of the RTC, the CA may actually grant an additional period of fifteen (15) days within which to file the petition and a further extension of time not exceeding fifteen (15) days for the most compelling reasons. This implies that the reglementary period is neither an impregnable nor an unyielding rule.

Here, there is also no material prejudice to respondents had the CA allowed the filing of a petition for review. When the Imus RTC declared as permanent the writ of preliminary injunction, the injunction became immediately executory. Respondents' suspension as Club members was effectively lifted; in effect, it restored their rights and privileges unless curtailed by a temporary restraining order or preliminary injunction.

More importantly, the substantive merits of the case deserve Our utmost consideration.

In the present case, Yu acknowledged that there was an offense committed.[29] Similarly, Yuhico admitted that he was aware or had prior knowledge of the Club's "no twosome" policy as contained in the Club's Membership Handbook and that they teed off without the required tee time slip.[30] Also, while Yu

---

[27] See *Calipay v. National Labor Relations Commission, supra* note at 467; and *Asia United Bank v. Goodland Company, Inc.,* 650 Phil. 174, 183-185 (2010).

[28] Promulgated on September 14, 2004 and took effect on October 15, 2004.

[29] TSN (SEC Case No. 002-01), February 15, 2005, p. 44; *rollo,* p. 745.

[30] TSN (SEC Cases Nos. 6681/6680), July 26,2000, pp. 28-29,42-44 and TSN (SEC Case No. 001-01), September 12, 2003, pp. 27-29, 35-36; *id.* at 772-774, 780-781, 1179-1180, 1193-1195.

recognized telling Montallana *"kamote ka,"* Yuhico heard him also say that he (Montallana) is *"gago."*[31]

Respondents assert that the "no twosome" policy was relaxed by the management when a member or player would not be prejudiced or, in the words of Yu, allowed when *"maluwag."*[32] Yet a thorough reading of the transcript of stenographic records (TSN) disclosed that such claim is based not on concrete examples. No specific instance as to when and under what circumstance the supposed relaxation took place was cited. Yuhico roughly recollected two incidents but, assuming them to be true, these happened only after May 28, 2000.[33] Further, the tee pass or control slip and the Club's Palmer Course Card[34] which was identified by respondents' witness, Pepito Dimabuyo, to prove that he and another member were allowed to play twosome on June 13, 2004, a Sunday, indicated that they were allowed to tee off only at 1:45 p.m.[35] Lastly, granting, for the sake of argument, that the "no twosome" policy had been relaxed in the past, Montallana cannot be faulted in exercising his prerogative to disallow respondents from playing since they made no prior reservation and that there were standing flights waiting for tee time. Per Cipriano Santos' Report, May 28, 2000 was a relatively busy day as it had 200 registered players to accommodate as of 8:00 a.m.

It was averred that respondents teed off without the required tee time slip based on the thinking that it was no longer necessary since Santos, the Club's Manager, allowed them by waving

---

[31] TSN (SEC Cases Nos. 6681/6680), July 26, 2000, p. 32; TSN (SEC Case No. 001-0 I), September 12, 2003, pp. 11-12, 3; and TSN (SEC Case No. 002-01), February 15, 2005, p. 29; *id.* at 731, 757-758, 776, 1183.

[32] TSN (SEC Case No. 001-01), September 12, 2003, pp. 7-8, 29-30, 36 and TSN (SEC Case No. 002-01), February 15, 2005, pp. 10-11, 31-32, 43-44; *id.* at 713-714, 733-734, 744-745, 753-754, 774-775, 781.

[33] TSN (SEC Cases Nos. 6681/6680), July 26, 2000, pp. 20-24, 87-90, 105-107; *id.* at 1171-1175, 1238-1241, 1256-1258.

[34] *CA rollo,* pp. 703-704.

[35] TSN (SEC Case No. 001-01 and 002-01), November 2006, pp. 8-10; *rollo,* pp. 790-792.

his hands when Yuhico's caddie tried to pick up the slip in the registration office. Such excuse is flimsy because it ignored the reality that Santos, a mere subordinate of Montallana who already earned the ire of Yu, was practically more helpless to contain the stubborn insistence of respondents.

Definitely, the contentions that respondents were not stopped by the management when they teed off and that they did not cause harm to other members playing golf at the time for absence of any complaints are completely immaterial to the fact that transgressions to existing Club rules and regulations were committed. It is highly probable that they were tolerated so as to restore the peace and avoid further confrontation and inconvenience to the parties involved as well as to the Club members in general.

With regard to the purported damages they incurred, respondents testified during the trial to support their respective allegations. Yuhico stated that he distanced himself from his usual group *(the "Alabang Boys")* and that he became the butt of jokes of fellow golfers.[36] On the other hand, Yu represented that some of his friends in the business like Freddy Lim, a certain Atty. Benjie, and Jun Ramos started to evade or refuse to have dealings with him after his suspension.[37] Apart from these self-serving declarations, respondents presented neither testimonial nor documentary evidence to bolster their claims. Worse, Yu even admitted that Freddy Lim and Atty. Benjie did not tell him that his suspension was the reason why they did not want to transact with him.[38]

Records reveal that respondents were given due notice and opportunity to be heard before the Board of Directors imposed the penalty of suspension as Club members. Respondent Yu

---

[36] TSN (SEC Case Nos. 001-01 and 002-01), June 10, 2003, p. 10; *id.* at 1016.

[37] TSN (SEC Case No. 002-01), February 15, 2005, pp. 22-26, 33-39; *id.* at 724-728, 735-741.

[38] TSN (SEC Case No. 002-01), February 15, 2005, pp. 44-45; *id.* at 745-746.

was served with the May 31, 2000 letter[39] signed by then Acting General Manager Tomas B. Clemente III informing that he violated the "no twosome" policy, teed off without the required tee time slip, and uttered derogatory remarks to Montallana in front of another member and the caddies. In response, Yu's counsel asked for a copy of Montallana's report and a formal hearing to confront the complainant and all the witnesses.[40] Subsequently, on June 13, 2000, Yu, through counsel, submitted his explanation that included an admission of the "no twosome" policy.[41] Finally, on September 15, 2000, Yu was advised of the Board resolution to give him another opportunity to present his side in a meeting supposed to be held on September 20, 2000.[42] It appears, however, that Yu refused to attend.[43]

Likewise, respondent Yuhico was given by Clemente a letter dated May 31, 2000 informing him of violating the "no twosome" policy and teeing off without the required tee time slip.[44] After receiving the same, Yuhico called up Clemente to hear his side.[45] Like Yu, however, Yuhico later refused to attend a meeting with the Board.[46]

Respondents were suspended in accordance with the procedure set forth in the Club's By-laws. There is no merit on their insistence that their suspension is invalid on the ground that the affirmative vote of eight (8) members is required to support a decision suspending or expelling a Club member. Both the

---

[39] *Rollo,* p. 136.

[40] *Id.* at 138.

[41] *Id.* at 139-141.

[42] *Id.* at 198.

[43] *Id.* at 199.

[44] *Rollo,* p. 137.

[45] TSN (SEC Cases Nos. 6681 /6680), July 26, 2000, pp. 69-71 *(Id.* at 1220-1222).

[46] *Rollo,* p. 200.

provisions of Articles of Incorporation[47] and By-Laws[48] of the Club expressly limit the number of directors to seven (7); hence, the provision on suspension and expulsion of a member which requires the affirmative vote of eight (8) members is obviously a result of an oversight. Former Senator Helena Z. Benitez, the Honorary Chairperson named in the Membership Handbook, could not be included as a regular Board member since there was no evidence adduced by respondents that she was elected as such pursuant to the Corporation Code and the By-laws of the Club or that she had the right and authority to attend and vote in Board meetings. In addition, at the time the Board resolved to suspend respondents, the affirmative votes of only six (6) Board members already sufficed. The testimony of Jesus A. Liganor, who served as Assistant Corporate Secretary, that Rodrigo Francisco had not attended a single Board meeting since 1997 remains uncontroverted.[49] The Court agrees with petitioners that the Club should not be powerless to discipline its members and be helpless against acts inimical to its interest just because one director had been suspended and refused to take part in the management affairs.

Lastly, contrary to respondents' position, the recommendation of the House Committee[50] to suspend a Club member is not a pre-requisite. Section 1, Article XIV,[51] not Section 2 (b), Article

---

[47] Article VI *(Id.* at 106).

[48] Article VII *(Id.* at 807-809).

[49] TSN (SEC Case Nos. 00l-0l and 002-0l), February 14, 2006, pp. 6-9 *(Id.* at 992-995).

[50] According to Article XI, Section 1 of the By-laws, the House Committee is one of the standing committees of the Club, which shall be the President's advisory board. The committees shall generally perform staff functions, formulate, propose and recommend policies and procedures, and report and be directly responsible to the President. *(Id.* at 813-814)

[51] Sec. 1. **Suspension and Expulsion.** The Board of Directors, by the affirmative vote of eight of its members, may reprimand, suspend or expel a member on any of the following grounds:

a. Violation of articles of incorporation or the By-laws;

XI,[52] of the By-Laws governs as it outlines the procedure for the suspension of a member. Even assuming that the recommendation of the House Committee is mandatory, respondents failed to prove, as a matter of fact, that petitioners acted in bad faith in relying on the subject provision, which employs the permissive word *"may"* in reference to the power of the House Committee to recommend anytime the suspension of a Club member.

Way different from the trial court's findings, there is, therefore, no factual and legal basis to grant moral and exemplary damages, attorney's fees and costs of suit in favor of respondents. The damages suffered, if there are any, partake of the nature of a *damnum absque injuria.* As elaborated in *Spouses Custodio v. CA*:[53]

> x x x [T]he mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom.

---

b. Violation of Rules and Regulations adopted by the Board of Directors; or

c. Acts or conduct of the member inimical to the interest and purposes of the Club.

The member concerned shall be informed of the charges against him in writing and may appeal to a general or special meeting of stockholders whose decision shall be final.

The suspension or expulsion of a regular member shall automatically include the suspension or expulsion of the assignees or representatives of said member. If a nominee or representative of a regular member is suspended or expelled by reason other than delinquency in the payment of accounts, only the erring nominee or representative shall be disciplined. *(Id.* at 820)

[52] b. **House Committee –** The House Committee with the approval of the Board shall make and promulgate the rules and regulations for the management of the Club and the use of the Clubhouse and all facilities; regulate the prices of commodities and services within its jurisdiction; formulate policies on purchasing functions; and subject to its House Rules, may at anytime, recommend to the Board the suspension of any member, and exercise such other powers and perform such functions as may be authorized by the Board. *(Id.* at 814).

[53] 323 Phil. 575 (1996).

Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.

There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.*

In order that a plaintiff may maintain an action for the injuries or which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff – a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.

Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong.

In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnum et injuria.* If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnum absque injuria.*

x x x x x x x x x

The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action

arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria.* The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means.[54]

"One who makes use of his own legal right does no injury. *Qui jure suo utitur nullum damnum facit.* If damage results from a person's exercising his legal rights, it is *damnum absque injuria."*[55] In this case, respondents failed to prove by preponderance of evidence that there is fault or negligence on the part of petitioners in order to oblige them to pay for the alleged damage sustained as a result of their suspension as Club members. Certainly, membership in the Club is a privilege.[56] Regular members are entitled to use all the facilities and privileges of the Club, subject to its rules and regulations.[57] As correctly pointed out by petitioners, the mental anguish respondents experienced, assuming to be true, was brought upon them by themselves for deliberately and consciously violating the rules and regulations of the Club. Considering that respondents were validly suspended, there is no reason for the Club to compensate them. Indeed, the penalty of suspension provided for in Section 1, Article XIV of the By-Laws is a means to protect and preserve the interest and purposes of the Club. This being so, the suspension of respondents does not fall under any of the provisions of the Civil Code pertaining to the grant of moral and exemplary damages, attorney's fees, and litigation costs.

**WHEREFORE,** premises considered, the petition is **GRANTED.** The Resolutions dated September 16, 2009 and January 21, 2010 of the Court of Appeals in CA-G.R. SP No. 106918, which reconsidered and set aside its Resolution dated January 15, 2009, granting petitioners a fifteen- day period within which to file a petition for review under Rule 43 of the Rules,

---

[54] *Spouses Custodio, supra,* at 585-586, 588-589.

[55] *Pro Line Sports Center, Inc. v. CA,* 346 Phil. 143, 154 ( 1997).

[56] Article II, Section 1 of the By-laws (*Rollo,* p. 800).

[57] Article II, Section 2 of the By-laws (*Id.).*

is **ANNULLED AND SET ASIDE.** SEC Case Nos. 001-0l and 002-01 filed and raffled before the Regional Trial Court, Branch 21 of Imus, Cavite are hereby **DISMISSED** for lack of merit. Respondents are **ORDERED TO RETURN** to petitioners the total amount of ₱9,200,000.00 or ₱4,600,000.00 each, within **THIRTY (30) DAYS** from the time this decision becomes final and executory. Thereafter, said amount shall earn legal interest of six percent (6%) per annum until fully paid.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R. No. 192914. January 11, 2016]

**NAPOLEON D. SENIT,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; THE HOLDING OF TRIAL *IN ABSENTIA* IS AUTHORIZED UNDER THE CONSTITUTION WHICH PROVIDES THAT AFTER ARRAIGNMENT, TRIAL MAY PROCEED NOTWITHSTANDING THE ABSENCE OF THE ACCUSED PROVIDED THAT HE HAS BEEN DULY NOTIFIED AND HIS FAILURE TO APPEAR IS UNJUSTIFIABLE; APPLICATION IN CASE AT BAR.—** The holding of trial *in absentia* is authorized under Section 14(2), Article III of the 1987 Constitution which provides that after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his

failure to appear is unjustifiable. It is established that notices have been served to the counsel of the petitioner and his failure to inform his counsel of his whereabouts is the reason for his failure to appear on the scheduled date. Thus, the arguments of the petitioner against the validity of the proceedings and promulgation of judgment *in absentia* for being in violation of the constitutional right to due process are doomed to fail. x x x Similarly in the present case, the petitioner clearly had previous notice of the criminal case filed against him and was given the opportunity to present evidence in his defense. The petitioner was not in any way deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense, but he forfeited this right, through his own negligence, by not appearing in court at the scheduled hearings. The negligence of the petitioner in believing that the case was already terminated resulting to his failure to attend the hearings, is inexcusable.

**2. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; WHEN A MOTION FOR NEW TRIAL BASED ON NEWLY-DISCOVERED EVIDENCE MAY BE GRANTED, REQUISITES.—** "A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, it would probably change the judgment. It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it." The Court agrees with the CA in its decision which held that "a new trial may not be had on the basis of evidence which was available during trial but was not presented due to its negligence. Likewise, the purported errors and irregularities committed in the course of the trial against [the petitioner's] substantive rights do not exist."

**3. CRIMINAL LAW; REVISED PENAL CODE; QUASI-OFFENSES; CRIMINAL NEGLIGENCE; RECKLESS IMPRUDENCE; ELEMENTS.—** The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3)

that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time, and place.

**4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS ENTITLED TO GREAT WEIGHT AND IS EVEN CONCLUSIVE AND BINDING, IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF SIGNIFICANCE AND INFLUENCE.—** "Well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is entitled to great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. This rule is based on the fact that the trial court had the opportunity to observe the demeanor and the conduct of the witnesses." The Court finds in the instant case that there is no reason for this Court to deviate from the rule.

**APPEARANCES OF COUNSEL**

*Mario G. Andres, Jr.,* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**REYES, *J.*:**

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated November 20, 2009 and the Resolution[3] dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 00390-MIN

[1] *Rollo*, pp. 4-34.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba concurring; *id*. at 47-58.

[3] *Id*. at 60-66.

which affirmed with modification the Decision[4] dated April 26, 2006 of the Regional Trial Court (RTC) of Malaybalay City, Bukidnon, Branch 10, in Criminal Case No. 10717-00 convicting Napoleon D. Senit (petitioner) guilty beyond reasonable doubt of Reckless Imprudence resulting to Multiple Serious Physical Injuries and Damage to Property.

**The Antecedents**

The facts as narrated are culled from the Comments[5] of the Office of the Solicitor General (OSG) and from the assailed decision of the CA:

In the morning of September 2, 2000, private complainant Mohinder Toor, Sr. was driving north along Aglayan from the direction of Valencia on board his Toyota pick-up with his wife Rosalinda Toor, their three-year-old son Mohinder Toor, Jr., and househelper Mezelle Jane Silayan. He turned left and was coming to the center of Aglayan when a speeding Super 5 bus driven by petitioner and coming from Malaybalay headed south towards Valencia, suddenly overtook a big truck from the right side. Petitioner tried to avoid the accident by swerving to the right towards the shoulder of the road and applying the brakes, but he was moving too fast and could not avoid a collision with the pick-up. The bus crashed into the right side of private complainant's pick-up at a right angle.

All passengers of the pick-up were injured and immediately brought to Bethel Baptist Hospital, Sumpong, Malaybalay City. However, because of lack of medical facilities, they were transferred to the Bukidnon Doctor's Hospital in Valencia City, Bukidnon. Rosalinda Toor sustained an open fracture of the humerus of the right arm and displaced, closed fracture of the proximal and distal femur of the right lower extremity which required two surgical operations. She was paralyzed as a result of the accident and was unable to return to her job as the Regional Manager of COSPACHEM Product Laboratories. Mohinder Toor, Sr. spent about ₱580,000.00 for her treatment and ₱3,000.00 for Mezelle Jean Silayan, who suffered frontal area swelling as a result of the accident. Mohinder Toor, Sr. suffered a complete fracture of the scapular bone of his right shoulder while

---

[4] Rendered by Judge Josefina Gentiles Bacal; *id*. at 40-45.

[5] *Id*. at 76-115.

his son Mohinder Toor, Jr. sustained abdominal injury and a wound on the area of his right eye which required suturing. The damage sustained by the pick-up reached ₱106,155.00.

Thus, on May 30, 2001, Carlo B. Mejia, City Prosecutor of Malaybalay City, charged petitioner with Reckless Imprudence Resulting to Multiple Serious Physical Injuries and Damage to Property in an Amended Information which was filed with Branch 10 of the [RTC] in Malaybalay City. The information reads:

> "That on or about September 2, 2000 in the morning at [sic] Barangay Aglayan, Malaybalay City, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and criminally in violation of the Land Transportation and Traffic Code, in negligent, careless, imprudent manner and without precaution to prevent accident [to] life and property, drive a Super Five Nissan Bus, color white/red bearing plate No. MVD-776 owned by PAUL PADAYHAG of Rosario Heights, Iligan City, as a result hit and bumped the [sic] motor vehicle, Toyota Pick-up color blue with plate No. NEF-266 driven and owned by MOHINDER S. TOO[R,] SR., and with his wife Rosalinda Toor, son Mohinder Toor, Jr., 3 years old and househelp Mezelle Jane Silayan, 17 years old, riding with him. The Toyota pick-up was damaged in the amount of [₱]105,300.00 and spouses Mohinder Toor[,] Sr. and Rosalinda Toor, Mohinder Toor[,] Jr[.] and Mezelle Jane Silayan sustained the following injuries to wit:
>
> MOHINDER TOOR[,] SR.
>
> = complete fracture of superior scapular bone right shoulder
>
> MOHINDER TOOR[,] JR.
>
> = MPI secondary to MVA r/o Blunt abdominal injury
>
> = Saturing [sic] right eye area
>
> ROSALINDA TOOR
>
> = Fracture, open type 11, supracondylar, humerus right
>
> = Fracture, closed, Complete, displaced, subtrochanter
>
> = and supracondylar femur right

MEZELLE JANE SILAYAN

= Frontal area swelling 20 vehicular accident

to the damage and prejudice of the complainant victim in such amount that they are entitled to under the law.

CONTRARY TO and in Violation of Article 365 in relation to 263 of the Revised Penal Code. *IN RELATION TO THE FAMILY CODE*."[6] (Citations omitted)

Upon being arraigned on June 21, 2001, the petitioner, with the assistance of his counsel, pleaded not guilty to the Information in this case.[7]

Trial ensued. However, after the initial presentation of evidence for the petitioner, he resigned from his employment and transferred residence. His whereabouts allegedly became unknown so he was not presented as a witness by his new counsel.[8]

On April 26, 2006, the RTC rendered its Decision *in absentia* convicting the petitioner of the crime charged. The *fallo* of the decision reads:

WHEREFORE, premises considered and finding the accused NAPOLEON SENIT *y* Duhaylungsod guilty beyond reasonable doubt of the crime as charged, he is hereby sentenced to an imprisonment of an indeterminate penalty of Four [4] months and One [1] day of *Arresto Mayor* maximum as minimum and to Four [4] years and Two [2] months *Prision Correc[c]ional* medium as maximum. The accused is further ordered to indemnify the private complainant the amount of Fifty Thousand [₱50,000.00] Pesos as moral damages, the amount of Four Hundred Eighty Thousand [₱480,000.00] [Pesos] for the expenses incurred in the treatment and hospitalization of Rosalinda Toor, Mohinder Toor, Jr[.] and Mezelle Jean Silayan and the amount of Eighty Thousand [₱80,000.00] [Pesos] for the expenses incurred in the repair of the damaged Toyota pick-up vehicle.

---

[6] *Id*. at 77-80.

[7] *Id*. at 80.

[8] *Id*. at 49.

SO ORDERED.[9]

The RTC issued a Promulgation[10] dated August 4, 2006, which included an order for the arrest of the petitioner.

The petitioner then filed a motion for new trial *via* registered mail on the ground that errors of law or irregularities have been committed during trial that are allegedly prejudicial to his substantial rights. He claimed that he was not able to present evidence during trial because he was not notified of the schedule. Likewise, he mistakenly believed that the case against him has been dismissed as private complainant Mohinder Toor, Sr. (Toor, Sr.) purportedly left the country.[11]

On September 22, 2006, the public prosecutor opposed the motion for new trial filed by the petitioner.[12]

On October 26, 2006, the motion for new trial was denied by the lower court pronouncing that notices have been duly served the parties and that the reason given by the petitioner was self-serving.[13]

Dissatisfied with the RTC decision, the petitioner filed his Notice of Appeal dated November 6, 2006 by registered mail to the CA, on both questions of facts and laws.[14]

**Ruling of the CA**

On November 20, 2009, the CA affirmed the decision of the RTC with modification as to the penalty imposed, the dispositive portion thereof reads:

ACCORDINGLY, with MODIFICATION that [the petitioner] should suffer the penalty of three (3) months and one (1) day of

---

[9] *Id*. at 45.

[10] *Id*. at 39.

[11] *Id*. at 49-50.

[12] *Id*. at 50.

[13] *Id*.

[14] *Id*. at 7-8.

*arresto mayor*, the Court AFFIRMS in all other respects the appealed 26 April 2006 Decision of the [RTC] of Malaybalay City, Branch 10, in Criminal Case No. 10717-00.

No pronouncement as to costs.

SO ORDERED.[15]

In affirming with modification the decision of the RTC, the CA ratiocinated as follows: *first*, the evidence presented by OSG overwhelmingly points to the petitioner as the culprit. A scrutiny of the records further reveals that the pictures taken after the accident and the Traffic Investigation Report all coincide with the testimonies of the prosecution witnesses, which are in whole consistent and believable thus, debunking the claim of the petitioner that he was convicted on the mere basis of allegedly biased and hearsay testimonies which do not establish his guilt beyond reasonable doubt. In addition, there was no existing evidence to show that there was an improper motive on the part of the eyewitnesses.[16]

*Second*, it found the arguments of the petitioner to move for a new trial as baseless.[17]

*Lastly*, it rendered that the proper imposable penalty is the maximum period of *arresto mayor* in its minimum and medium periods that is – imprisonment for three (3) months and one (1) day of *arresto mayor* since the petitioner has, by reckless imprudence, committed an act which, had it been intentional, would have constituted a less grave felony, based on the first paragraph of Article 365 in relation to Article 48 of the Revised Penal Code (RPC).[18]

The petitioner filed a motion for reconsideration which was denied by the CA, in its Resolution[19] dated June 17, 2010.

---

[15] *Id*. at 57.

[16] *Id*. at 53-55.

[17] *Id*. at 55.

[18] *Id*. at 56-57.

[19] *Id*. at 60-66.

As a final recourse, the petitioner filed the petition for review before this Court, praying that the applicable law on the matter be reviewed, and the gross misappreciation of facts committed by the court *a quo* and by the CA be given a second look.

**The Issues**

I. WHETHER OR NOT THE RTC AND THE CA ERRED IN DENYING THE MOTION FOR NEW TRIAL OR TO RE-OPEN THE SAME IN ORDER TO ALLOW THE PETITIONER TO PRESENT EVIDENCE ON HIS BEHALF; AND

II. WHETHER OR NOT THE RTC ERRED IN CONVICTING THE PETITIONER DESPITE THE APPARENT FAILURE ON THE PART OF THE PROSECUTION TO PROVE THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.[20]

**Ruling of the Court**

The petition lacks merit.

**The RTC and CA did not err in denying the petitioner's motion for new trial or to re-open the same.**

The Court finds that no errors of law or irregularities, prejudicial to the substantial rights of the petitioner, have been committed during trial.

The petitioner anchors his motion for new trial on Rule 121, Section 2(a) of the Revised Rules of Criminal Procedure, to wit:

> Sec. 2. *Grounds for a new trial*. – The Court shall grant a new trial on any of the following grounds:
>
> **(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial**;
>
> (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered

[20] *Id*. at 13.

and produced at the trial and which if introduced and admitted would probably change the judgment. (Emphasis ours)

To sum up the claims of the petitioner, he theorizes that there was an error of law or irregularities committed when the RTC promulgated a decision *in absentia* and deemed that he had waived his right to present evidence resulting to denial of due process, a one-sided decision by the RTC, and a strict and rigid application of the Revised Rules of Criminal Procedure against him.

First, it must be noted that the petitioner had already been arraigned and therefore, the court *a quo* had already acquired jurisdiction over him. In fact, there was already an initial presentation of evidence for the defense when his whereabouts became unknown.

The petitioner's claims that he had not testified because he did not know the schedule of the hearings, and mistakenly believed that the case had already been terminated with the departure of Toor, Sr., do not merit our consideration.[21]

The holding of trial *in absentia* is authorized under Section 14(2), Article III of the 1987 Constitution which provides that after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.[22] It is established that notices have been served to the counsel of the petitioner and his failure to inform his counsel of his whereabouts is the reason for his failure to appear on the scheduled date. Thus, the arguments of the petitioner against the validity of the proceedings and promulgation of judgment *in absentia* for being in violation of the constitutional right to due process are doomed to fail.[23]

---

[21] *Id*. at 14.

[22] *Bernardo v. People*, 549 Phil. 132, 144 (2007), citing *Estrada v. People,* 505 Phil. 339, 351 (2005).

[23] *Estrada v. People*, *id*.

In *Estrada v. People*,[24] the Court ruled that:

> Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.
>
> In the present case, petitioner was afforded such opportunity. The trial court set a hearing on May 14, 1997 for reception of defense evidence, notice of which was duly sent to the addresses on record of petitioner and her counsel, respectively. When they failed to appear at the May 14, 1997 hearing, they later alleged that they were not notified of said setting. Petitioner's counsel never notified the court of any change in her address, while petitioner gave a wrong address from the very beginning, eventually jumped bail and evaded court processes. Clearly, therefore, petitioner and her counsel were given all the opportunities to be heard. They cannot now complain of alleged violation of petitioner's right to due process when it was by their own fault that they lost the opportunity to present evidence.[25] (Citation omitted)

Similarly in the present case, the petitioner clearly had previous notice of the criminal case filed against him and was given the opportunity to present evidence in his defense. The petitioner was not in any way deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense, but he forfeited this right, through his own negligence, by not appearing in court at the scheduled hearings.[26]

The negligence of the petitioner in believing that the case was already terminated resulting to his failure to attend the hearings, is inexcusable. The Court has ruled in many cases that:

> It is petitioner's duty, as a client, to be in touch with his counsel so as to be constantly posted about the case. It is mandated to inquire from its counsel about the status and progress of the case from time to time and cannot expect that all it has to do is sit back, relax and await the outcome of the case. It is also its responsibility, together

---

[24] 505 Phil. 339 (2005).

[25] *Id*. at 353-354.

[26] *Rollo*, pp. 89-90.

with its counsel, to devise a system for the receipt of mail intended for them.[27] (Citations omitted)

The Court finds that the negligence exhibited by the petitioner, towards the criminal case against him in which his liberty is at risk, is not borne of ignorance of the law as claimed by his counsel rather, lack of concern towards the incident, and the people who suffered from it. While there was no showing in the case at bar that the counsel of the petitioner was grossly negligent in failing to inform him of the notices served, the Court cannot find anyone to blame but the petitioner himself in not exercising diligence in informing his counsel of his whereabouts.

The Court also agrees with the Comment of the OSG that there is neither rule nor law which specifically requires the trial court to ascertain whether notices received by counsel are sufficiently communicated with his client.[28]

In *GCP-Manny Transport Services, Inc. v. Judge Principe*,[29] the Court held that:

> [W]hen petitioner is at fault or not entirely blameless, there is no reason to overturn well-settled jurisprudence or to interpret the rules liberally in its favor. Where petitioner failed to act with prudence and diligence, its plea that it was not accorded the right to due process cannot elicit this Court's approval or even sympathy. It is petitioner's duty, as a client, to be in touch with his counsel so as to be constantly posted about the case. x x x.[30] (Citations omitted)

Even if the Court assumed that the petitioner anchors his claim on Section 2(b) of Rule 121 of the Revised Rules of Criminal Procedure, the argument still has no merit.

"A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a)

---

[27] *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 186 (2005).

[28] *Rollo*, p. 93.

[29] 511 Phil. 176 (2005).

[30] *Id*. at 185-186.

that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, it would probably change the judgment. It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it."[31] The Court agrees with the CA in its decision which held that "a new trial may not be had on the basis of evidence which was available during trial but was not presented due to its negligence. Likewise, the purported errors and irregularities committed in the course of the trial against [the petitioner's] substantive rights do not exist."[32]

In *Lustaña v. Jimena-Lazo*,[33] the Court ruled that:

> Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that *strict adherence thereto is required*. Their application may be relaxed only when rigidity would result in a defeat of equity and substantial justice, which is not present here. Utter disregard of the Rules cannot just be rationalized by harking on the policy of liberal construction.[34] (Citations omitted and italics in the original)

In the instant case, the Court finds no reason to waive the procedural rules in order to grant the motion for new trial of the petitioner. There is just no legal basis for the grant of the motion for new trial. The Court believes that the petitioner was given the opportunity to be heard but he chose to put this opportunity into waste by not being diligent enough to ask about the status of the criminal case against him and inform his counsel of his whereabouts.

---

[31] *De Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 388-389 (2004).

[32] *Rollo*, p. 56.

[33] 504 Phil. 682 (2005).

[34] *Id*. at 684.

**The RTC did not err in convicting the petitioner.**

The law applicable to the case at bar is Article 365 of the RPC, which provides that:

> Art. 365. *Imprudence and negligence*. – x x x.
>
> x x x x x x x x x
>
> Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.
>
> x x x x x x x x x

The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time, and place.[35]

All elements for the crime of reckless imprudence have been established in the present case.

The petitioner questions the credibility of the prosecution witnesses and claims that their testimonies are biased. He also claims that Toor, Sr. is the real culprit when he turned left without looking for an incoming vehicle, thus violating traffic rules resulting to the mishap.

The Court believes that the RTC and CA correctly appreciated the evidence and testimonies presented in the instant case.

The Court agrees with the OSG that not only were the witnesses' narrations of the accident credible and worthy of belief, their

---

[35] *Dr. Cruz v. CA*, 346 Phil. 872, 883 (1997).

accounts were also consistent and tallied on all significant and substantial points.[36] These witnesses' testimonies are as follows:

PO3 Jesus Delfin testified that he investigated the accident at Aglayan. He made the following findings in his accident report: the pick-up owned and driven by Toor, Sr., together with his family and a househelper as his passengers, was turning left along Aglayan when it was hit at a right angle position by a Super 5 bus driven by the petitioner. He noted skid marks made by the bus and explained that the petitioner was overtaking but was not able to do so because of the pick-up. The petitioner could not swerve to the left to avoid the pick-up because there was a ten-wheeler truck. He swerved to the right instead and applied breaks to avoid the accident. The investigator clearly testified that, on the basis of data gathered, the collision was due to the error of the bus driver who was driving too fast, as evinced by the distance from the skid marks towards the axle.[37]

Albert Alon testified that he saw Toor, Sr.'s pick-up turn left along Aglayan. He also saw a big truck and a Super 5 bus both coming from Malaybalay. The truck was running slowly while the Super 5 bus was running fast and overtaking the big truck from the right side. The bus crashed into the pick-up and pushed the smaller vehicle due to the force of the impact. He went nearer the area of collision and saw that the four passengers of the pick-up were unconscious.[38]

Mezelle Jane Silayan testified that while moving towards the center of Aglayan on board her employer's pick-up, she saw a Super 5 bus overtaking a big truck from the right side. Their vehicle was hit by the bus. She was thrown out of the pick-up and hit her head on the ground.[39]

Toor, Sr. testified that while he was driving his pick-up at the corner of the center of Aglayan, a Super 5 bus, moving

---

[36] *Rollo*, p. 103.

[37] *Id*. at 98-99.

[38] *Id*. at 99.

[39] *Id*. at 100.

fast, overtook a big truck from the right side. The bus then hit the pick up, injuring him and all his passengers.[40]

Taken all together, the testimonies of the witnesses conclusively suggest that: (1) the Super 5 bus was moving fast; (2) the bus overtook a big truck which was moving slowly from the right side; and (3) when the petitioner saw the pick-up truck turning left, he applied the brakes but because he was moving fast, the collision became inevitable.

"Well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is entitled to great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. This rule is based on the fact that the trial court had the opportunity to observe the demeanor and the conduct of the witnesses."[41] The Court finds in the instant case that there is no reason for this Court to deviate from the rule.

The Court finds the testimonies of the witnesses not biased. There was no evidence of ill motive of the witnesses against the petitioner.

Lastly, the petitioner claims that Toor, Sr. committed a traffic violation and thus, he should be the one blamed for the incident. The Court finds this without merit.

The prosecution sufficiently proved that the Super 5 bus driven by the petitioner recklessly drove on the right shoulder of the road and overtook another south-bound ten-wheeler truck that slowed at the intersection, obviously to give way to another vehicle about to enter the intersection. It was impossible for him not to notice that the ten-wheeler truck in front and traveling in the same direction had already slowed down to allow passage of the pick-up, which was then negotiating a left turn to Aglayan public market. Seeing the ten-wheeler truck slow down, it was incumbent upon the petitioner to reduce his speed or apply on the brakes of the bus in order to allow the pick-up to safely

---

[40] *Id*. at 98-100.

[41] *People v. Rendaje*, 398 Phil. 687, 701 (2000).

make a left turn. Instead, he drove at a speed too fast for safety, then chose to swerve to the right shoulder of the road and overtake the truck, entering the intersection and directly smashing into the pick-up. In flagrantly failing to observe the necessary precautions to avoid inflicting injury or damage to other persons and things, the petitioner was recklessly imprudent in operating the Super 5 bus.[42]

In *Dumayag v. People*,[43] the Court held:

> Section 37 of R.A. No. 4136, as amended, mandates all motorists to drive and operate vehicles on the right side of the road or highway. When overtaking another, it should be made only if the highway is clearly visible and is free from oncoming vehicle. Overtaking while approaching a curve in the highway, where the driver's view is obstructed, is not allowed. Corollarily, **drivers of automobiles, when overtaking another vehicle, are charged with a high degree of care and diligence to avoid collision. The obligation rests upon him to see to it that vehicles coming from the opposite direction are not taken unaware by his presence on the side of the road upon which they have the right to pass**.[44] (Citations omitted and emphasis ours)

Thus, the petitioner cannot blame Toor, Sr. for not noticing a fast-approaching bus, as the cited law provides that the one overtaking on the road has the obligation to let other cars in the opposite direction know his presence and not the other way around as the petitioner suggests.

**WHEREFORE**, the petition is **DENIED**. Accordingly, the Decision dated November 20, 2009 and the Resolution dated June 17, 2010 of the Court of Appeals in CA-G.R. CR No. 00390-MIN are **AFFIRMED**.

**SO ORDERED.**

*Peralta (Acting Chairperson), Brion*[*]*, Villarama, Jr.,* and *Jardeleza, JJ.,* concur.

---

[42] *Rollo,* pp. 53-54.

[43] G.R. No. 172778, November 26, 2012, 686 SCRA 347.

[44] *Id*. at 360.

[*] Designated Additional Member per Raffle dated June 29, 2015.

**SECOND DIVISION**

[G.R. No. 193140. January 11, 2016]

**MILA GRACE PATACSIL PIOTROWSKI, rep. by her attorney-in-fact, VENUS G. PATACSIL,** *petitioner, vs.* **HON. COURT OF APPEALS and GINA Q. DAPLIYAN,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE DELETION OF THE PROVISIONS PERTAINING TO EXTENSION OF TIME DID NOT MAKE THE FILING OF SUCH PLEADING ABSOLUTELY PROHIBITED; RATIONALE.—** In *Thenamaris Philippines, Inc. v. Court of Appeals,* we held that the *general rule* is that a petition for *certiorari* must be filed *strictly* within sixty days from notice of the judgment or order denying the motion for reconsideration. However, the deletion of the provisions in Rule 65 pertaining to extension of time did not make the filing of such pleading absolutely prohibited. The Court observed that if this had been the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." In the absence of such prohibition, motion for extension are allowed, subject to the court's sound discretion. Citing another case, the Court held that there are recognized exception to the strict observance of the Rule. x x x In addition, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules. Heavy workload, standing alone, is not a sufficient reason to deviate from the sixty-day rule. More importantly, a motion for extension of time must be filed before the expiration of the period sought to be extended; otherwise, the motion would have no effect since there would no longer be any period to extend and the assailed judgment or order would have become final and executory. The above principles make it obvious that the sixty-day period is *generally* not extendible. The courts, however, may grant extension *only if* any of the recognized exceptions exists. It follows that an unjustified and unfettered grant of extension may be assailed via a petition for *certiorari*. The

grave abuse of discretion in such case would be the baseless extension of the sixty-day period, needlessly delaying the resolution of the case. Additionally, there may be grave abuse of discretion if the court denies a motion for additional time despite the clear presence of a ground justifying an extension. The grave abuse of discretion in that case would be the unreasonably strict application of the rules resulting in prejudice and injustice to a litigant. In either case, the court must carefully exercise its discretion whether to grant or deny a request for extension. It must base its decision on the grounds raised and whether these grounds have been established by the party requesting for extension.

**APPEARANCES OF COUNSEL**

*Pablo M. Olarte* for petitioner.
*Rolando Rivera* for private respondent.

**D E C I S I O N**

**BRION, *J.*:**

Before this Court is a petition for *certiorari*[1] filed by Mila Grace Patacsil Piotrowski (*Piotrowski*) to challenge the March 15, 2010[2] and July 19, 2010[3] resolutions of the Court of Appeals (*CA*) in CA-G.R. No. SP No. 113020.

The CA, through the challenged resolutions, denied Piotrowoski's urgent *motion for additional time* to file a petition, for *certiorari*[4] and motion for reconsideration of the denial.[5]

---

[1] *Rollo,* pp. 8-35. The petition is filed under Rule 65 of the Rules of Court.

[2] *Id*. at 38-39. The resolution is penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Marelene Gonzales-Sison and Stephen C. Cruz of the Special Fourth Division.

[3] *Id*. at 55-58.

[4] *Id*. at 59-63. The intended Rule 65 petition was attached to the urgent motion at 64-110.

[5] *Id*. at 40-51.

**Antecedents**

This case stemmed from a complaint[6] for annulment of documents with recovery of possession and damages filed by respondent Gina Q. Dapliyan (*Dapliyan*) against her father Simeon Dapliyan (*Simeon*) and petitioner Piotrowski before the Regional Trial Court (*RTC*) of Agoo, La Union.

The dispute involved a parcel of land with an area of 3,577 square meters located at Barangay Saytan, Pugo, La Union. The land was allegedly registered under the names of Simeon and his late wife Petra Ternate-Dapliyan.[7]

The RTC found that Dapliyan failed to exert earnest efforts to compromise with her father as required by the Family Code and the Rules on *Katarungang Pambarangay*. The RTC thus dismissed the *original complaint* against Simeon.

Dapliyan then filed an *amended complaint* alleging that she failed to compromise with her father despite earnest efforts. She later filed a *re-amended complaint*[8] with the same allegations except for the corrected United States address of Piotrowski.

Dapliyan alleged that Simeon sold portions of the undivided land to Piotrowski in 2002. She averred that Simeon and Piotrowski made it appear that her mother who died in 1992 signed the Deeds of Absolute Sale. Dapliyan further claimed that Piotrowski registered the falsified Deeds of Absolute Sale with the Office of the Register of Deeds and consequently took possession of the lots.

Dapliyan prayed that the RTC nullify the Deeds of Absolute Sale and all the other documents issued by virtue of the Deeds. She also prayed for the award of damages, costs of litigation, and attorney's fees.[9]

---

[6] Civil Case No. A-2204, Regional Trial Court, Branch 31, Agoo, La Union, presided by Executive Judge Clifton U. Ganay.

[7] *Rollo*, p. 143.

[8] *Id*. at 142-146. The re-amended complaint was dated March 31, 2003.

[9] *Id*. at 145.

**The Proceedings at the Regional Trial Court**

The RTC dismissed the re-amended complaint against Simeon because there was no proof that the case passed through the *barangay* conciliation proceedings, a condition precedent before judicial action.[10]

The RTC, however, declared Piotrowski in default and found the re-amended complaint meritorious as against her.

In its **August 31, 2004** decision, the RTC ruled that:

> The defendant Mila Grace Piotrowski did not file her answer after a long passage of time.
>
> In the Order of this Court dated **August 30, 2004** it was stated that this case will be decided under Section 3, Rule 9 [*declaration of default*] of the 1997 Rules of Civil Procedure.
>
> The Complaint is **meritorious** as against the defendant, Mila Grace Piotrowski.

The RTC did not discuss why the case was meritorious against Piotrowski. The dispositive portion of the RTC decision reads:

> WHEREFORE, upon the foregoing premises, judgment is hereby rendered in favor of the plaintiff, declaring the two (2) Deeds of Absolute Sale null and void. The defendant Piotrowski is ordered to pay the plaintiff the following -
>
> 1. The amount of Ten Thousand Pesos (₱10,000.00) for actual damages;
> 2. Ten Thousand Pesos (₱10,000.00) for attorney's fees; and
> 3. Sixteen Thousand Pesos (₱16,000.00) for litigation expenses.
>
> SO ORDERED.

A writ of execution was issued to implement the RTC decision.[11]

---

[10] *Id*. at 163.

[11] *Id*. at 50. A copy of the writ of execution is not on record but Piotrowski judicially admitted that the writ had been issued.

Almost **four years** after the promulgation of the August 31, 2004 RTC decision, Piotrowski filed on July 14, 2008, an **omnibus motion**[12] for **new trial** and to **set aside the decision**, the **order of default, and the writ of execution.**

Piotrowski claimed that she learned of the judgment against her only on **July 7, 2008**, when she went to the RTC to confirm the information she gathered about the case. Piotrowski thereafter filed the omnibus motion assailing the August 31, 2004 decision. She averred that the omnibus motion was timely filed on **July 14, 2008**, or within the fifteen-day reglementary period counted from July 7, 2008, when she was made aware of the decision.

Piotrowski argued that the RTC had no jurisdiction to hear the case because no summons was ever issued. She further alleged that she was not notified that a motion, if any, had been filed to declare her in default. She also argued that the dismissal of the complaint against Simeon rendered all subsequent actions of the RTC null and void.

On September 11, 2008, the RTC issued an order[13] partly granting Piotrowski's omnibus motion "to give her a fighting chance to dispute the claim of [Dapliyan] by adducing her evidence, all in the interest of justice."

Piotrowski thus filed her answer to the re-amended complaint. She claimed that she is the absolute and registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-7382.[14] Piotrowski averred that she acquired the parcel of land by virtue of the Deed of Absolute Sale[15] executed in her favor by Simeon on June 15, 2004.

Piotrowski asserted that the lot sold to her was a portion of a bigger land covered by TCT No. RT-4511 registered under the name of Simeon. Simeon allegedly became the exclusive

---

[12] *Id*. at 147-159.

[13] *Id*. at 172.

[14] *Id*. at 166.

[15] *Id*. at 164-165.

owner of the land when he and his heirs, including Dapliyan, executed an extrajudicial settlement dividing the property.[16]

During the "new trial," Piotrowski testified and presented her witnesses. She also formally offered her documentary evidence.[17] Dapliyan did not present any rebuttal evidence.

On **September 30, 2009**, the RTC declared that its **August 31, 2004 decision** had become **final and executory**[18] and **could not be assailed by a mere motion**. The RTC ruled that Piotrowski's omnibus motion was an improper remedy and that the final and executory August 31, 2004 decision "should have been assailed in a new case under a Rule that is appropriate to the situation."

Piotrowski then filed a notice of appeal[19] of the August 31, 2004 decision and September 30, 2009 order. The notice of appeal was amended on October 20, 2009, to correct a typographical error.[20] The RTC gave due course to the amended notice of appeal on the same day.[21]

However, the RTC later denied due course to the amended notice of appeal and granted Dapliyan's motion for reconsideration of the October 20, 2009 order. The RTC held that the August 31, 2004 decision, which had become final and executory, could no longer be appealed.

Piotrowski moved[22] but failed[23] to obtain a reconsideration of the November 18, 2009 RTC order. Her counsel then filed with the CA the motion for additional time to file a petition for *certiorari,* on the ground, among others, of heavy workload.

---

[16] *Id*. at 207-210.

[17] *Id*. at 179-184.

[18] *Id*. at 139-141.

[19] *Id*. at 230.

[20] *Id*. at 232.

[21] *Id*. at 130.

[22] *Id*. at 115-120.

[23] *Id*. at 114.

### The Court of Appeals Ruling

The CA denied the motion for additional time to file a petition for *certiorari*. It held that the ground invoked by the petitioner - *i.e.*, Section 4 (3) of Rule 65 of the Rules of Court, which provides that "[n]o extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days" - has been **deleted** on December 27, 2007 by A.M. No. 07-7-12-SC (*Amendments to Rules 41, 45, 58 and 65 of the Rules of Court*).

The dispositive portion of the March 15, 2010 resolution reads:

"WHEREFORE, premises considered, the Urgent Motion for Additional Time to File Petition is **DENIED** and the instant case is deemed **CLOSED** and **TERMINATED**.

**SO ORDERED**."

Aggrieved, Piotrowski moved for reconsideration of the March 15, 2010 resolution. She argued that there was substantial compliance with the rules. She noted that the petition for *certiorari* was duly filed on March 22, 2010, or merely 10 days from the date when it should have been filed. She reiterated that there were just and compelling reasons for granting the motion for additional time.

On July 19, 2010, the CA denied Piotrowski's motion for reconsideration; thus, she came to us for relief through the present petition.

### The Petition[24]

Piotrowski questions the *overly strict application* of the Rules of Court and contends that the CA disregarded issues of paramount importance. She argues that although the provision on motion for extension had been deleted, a motion for extension of time is not absolutely prohibited. She invokes the rule that the reason for procedural law is the orderly administration of

---

[24] *Supra* note 1.

justice, that is, to ensure the effective enforcement of substantive rights.

She reiterates that the decision and order of the RTC were void since the trial court did not acquire jurisdiction over her person.

Thus, Piotrowski prays that the Court set aside the CA resolutions, dismiss the re-amended complaint, and set aside the August 31, 2004 decision and September 30, 2009 order of the RTC.

**The Respondent's Case**[25]

Dapliyan argues that the CA was correct in strictly applying the Rules of Court as A.M. No. 07-7-12-SC had removed the phrase "[n]o extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days" from Rule 65. She insists that the assailed RTC judgment had already lapsed into finality for Piotrowski's failure to appeal. She maintains that a Rule 65 petition is not the proper remedy to obtain relief from a final and executory judgment. Finally, Dapliyan argues that Piotrowski waived the lack of jurisdiction over her person when she filed the omnibus motion questioning the August 31, 2004 RTC decision.

**The Issue**

Notwithstanding the number of issues the parties raised, the case poses to the Court the *core issue* of whether the CA gravely abused its discretion when it denied Piotrowski's motion for additional time to file a petition for *certiorari.*

**The Court's Ruling**

We dismiss the petition for lack of merit.

The CA did not gravely abuse its discretion when it denied Piotrowski's motion for additional time to file a petition for *certiorari.* The strict application of the Rules of Court does not by itself constitute grave abuse of discretion.

---

[25] *Rollo*, pp. 240-261.

Piotrowski laments what she describes as the *overly strict application* of Rule 65. She claims that the CA ignored issues of paramount importance and disregarded her substantive rights over her property.

We do not agree with Piotrowski.

The strict application by the CA of the Rules of Court does not by itself constitute grave abuse of discretion. The CA had basis to deny the motion for additional time because the provision previously allowing extension of time to file a petition for *certiorari* (for compelling reason) had been deleted by A.M. No. 07-7-12-SC.

Further, the CA cited *Laguna Metts Corp. v. Court of Appeals*[26] as basis for the denial of Piotrowski's motion. The dispute in that case arose from a resolution of the National Labor Relations Commission (*NLRC*) reversing the decision of the Labor Arbiter in favor of the employees. The counsel for the employees filed with the CA a motion for extension of time to file a petition for *certiorari*, citing among others, the counsel's heavy workload. The CA granted the motion. The employer filed with this Court a petition for *certiorari* questioning the grant of extension.

We granted the petition in that case and held that the CA gravely abused its discretion. The Court ruled that the CA had no power to grant something that had already been expressly deleted from the rules.

Notably, subsequent cases have tempered the strict ruling in *Laguna Metts*.

In *Thenamaris Philippines, Inc. v. Court of Appeals,*[27] we held that the *general rule* is that a petition for *certiorari* must be filed *strictly* within sixty days from notice of the judgment or order denying the motion for reconsideration. However, the deletion of the provisions in Rule 65 pertaining to extension of time did not make the filing of such pleading absolutely

---

[26] 611 Phil. 530 (2009).

[27] G.R. No. 191215. February 3, 2014, 715 SCRA 153.

prohibited. The Court observed that if this had been the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." In the absence of such prohibition, motions for extension are allowed, subject to the court's sound discretion.[28]

Citing another case,[29] the Court held that there are recognized exceptions to the strict observance of the Rules, such as:

> (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances.

In addition, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[30] Heavy workload, standing alone, is not a sufficient reason to deviate from the sixty-day rule.[31] More importantly, a motion for extension of time must be filed before the expiration of the period sought to be extended; otherwise, the motion would have no effect since there would no longer be any period to

---

[28] *Ibid*. Original quotations and citations omitted.

[29] *Ibid*., citing *Labao v. Flores*, G.R. No. 187984, November 15, 2010, 634 SCRA 723, 732.

[30] *Ibid.*

[31] *Supra* note 25 citing *Yutingco v. Court of Appeals,* 435 Phil. 84 (2002).

extend and the assailed judgment or order would have become final and executory.[32]

The above principles make it obvious that the sixty-day period is *generally* not extendible. The courts, however, may grant extension *only if* any of the recognized exceptions exists. It follows that an unjustified and unfettered grant of extension may be assailed via a petition for *certiorari.* The grave abuse of discretion in such case would be the baseless extension of the sixty-day period, needlessly delaying the resolution of the case.

Additionally, there may be grave abuse of discretion if the court denies a motion for additional time despite the clear presence of a ground justifying an extension. The grave abuse of discretion in that case would be the unreasonably strict application of the rules resulting in prejudice and injustice to a litigant.

In either case, the court must carefully exercise its discretion whether to grant or deny a request for extension. It must base its decision on the grounds raised and whether these grounds have been established by the party requesting for extension.

In the present case, Piotrowski's counsel manifested that he needed additional time to prepare the petition for *certiorari* because: (1) he had "some difficulty in consulting with [Piotrowski] who is residing abroad and is now in old age and in ailment [sic]"; (2) he was "burdened with duties as an officer of the court, in the preparation of some other petitions...which heavily toll on his time to finalize the petition"; and (3) "there is an urgent need for additional time to secure the certified true copies of the voluminous documents xxx required by the rules to support the petition."[33]

We do not find these *general and bare allegations* sufficient to relax the application of the Rules. Thus, the CA did not abuse,

---

[32] *Ibid.* at 167, citing *Vda. de Victoria v. Court of Appeals*, 490 Phil. 220, 221-222 (2005).

[33] *Supra* note 4.

much less gravely abuse, its discretion when it denied Piotrowski's motion for additional time.

Ideally, the CA should have tackled the merits of the grounds raised by Piotrowski and not merely held that the sixty-day period is non-extendible. Nonetheless, its failure to do so does not amount to grave abuse of discretion because Piotrowski's counsel gave no compelling reason that would have justified extension.

In *Laguna Metts*, the Court found unconvincing the grounds submitted by the counsel in asking for an extension of time to file the petition, namely, the "lack of material time occasioned by voluminous pleadings that have to be written and numerous court appearances to be undertaken" and "lack of funds."

On the first ground, we held that heavy workload is relative and often self-serving, and that standing alone, it is not a sufficient reason to deviate from the sixty-day rule. On the second ground (lack of funds), we ruled that it was a bare allegation unsubstantiated by any proof or affidavit of merit.[34]

As in *Laguna Metts,* the excuse of Piotrowski's counsel that he was "burdened with duties as an officer of the court" is self-serving. His excuse that he had difficulty consulting with Piotrowski who was abroad, allegedly old and sick, was not supported by proof or affidavit. We also cannot grant an extension simply because the case involved "voluminous documents." Otherwise, it would be easy for a litigant to engage in dilatory tactics by conveniently claiming that he had to "secure certified true copies of voluminous documents" without effort to prove the veracity of such claim.

For all these reasons, we hold that the CA did not gravely abuse its discretion when it denied the motion for additional time. With the core threshold issue in this case resolved, we see no more reason to tackle the parties' peripheral issues.

**WHEREFORE,** in view of the foregoing findings and legal premises, we **DISMISS** the petition and **AFFIRM** the March

[34] *Supra* note 25.

15, 2010 and July 19, 2010 resolutions of the Court of Appeals (CA) in CA-G.R. No. SP No. 113020.

**SO ORDERED.**

*Carpio (Chairperson), del Castillo, Mendoza,* and *Leonen, JJ.,* concur.

---

**SECOND DIVISION**

[G.R. Nos. 194964-65. January 11, 2016]

**UNIVERSITY OF MINDANAO, INC.,** *petitioner, vs.* **BANGKO SENTRAL NG PILIPINAS, ET AL.,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; MORTGAGES; THE PRESCRIPTION PERIOD FOR ACTIONS ON MORTGAGES IS TEN (10) YEARS FROM THE DAY THEY MAY BE BROUGHT; EXPLAINED.—** Prescription is the mode of acquiring or losing rights through the lapse of time. Its purpose is "to protect the diligent and vigilant, not those who sleep on their rights." The prescriptive period for actions on mortgages is ten (10) years from the day they may be brought. Actions on mortgages may be brought not upon the execution of the mortgage contract but upon default in payment of the obligation secured by the mortgage. A debtor is considered in default when he or she fails to pay the obligation on due date and, subject to exceptions, after demands for payment were made by the creditor. x x x Article 1193 of the Civil Code provides that an obligation is demandable only upon due date. x x x In other words, as a general rule, a person defaults and prescriptive period for action runs when (1) the obligation becomes due and demandable; and (2) demand for payment has been made. The prescriptive

period neither runs from the date of the execution of a contract nor does the prescriptive period necessarily run on the date when the loan becomes due and demandable. Prescriptive period runs from the date of demand, subject to certain exceptions. In other words, ten (10) years may lapse from the date of the execution of contract, without barring a cause of action on the mortgage when there is a gap between the period of execution of the contract and the due date or between the due date and the demand date in cases when demand is necessary.

**2. ID.; PRESCRIPTION; WHEN PRESCRIPTION OF ACTIONS MAY BE INTERRUPTED; PRESENT IN CASE AT BAR.—** Granting that this is the case, respondent would have had ten (10) years from due date in 1990 or until 2000 to institute an action on the mortgage contract. However, under Article 1155 of the Civil Code, prescription of actions may be interrupted by (1) the filing of a court action; (2) a written extrajudicial demand; and (3) the written acknowledgment of the debt by the debtor. Therefore, the running of the prescriptive period was interrupted when respondent sent its demand letter to petitioner on June 18, 1999. This eventually led to petitioner's filing of its annulment of mortgage complaints before the Regional Trial Courts of Iligan City and Cagayan De Oro City on July 16, 1999. Assuming that demand was necessary, respondent's action was within the ten (10)-year prescriptive period. Respondent demanded payment of the loans in 1999 and filed an action in the same year.

**3. MERCANTILE LAW; CORPORATION; CORPORATE POWERS; *ULTRA VIRES* ACTS; CORPORATE ACTS THAT ARE OUTSIDE THOSE EXPRESS DEFINITION UNDER THE LAW OR ARTICLES OF INCORPORATION OR THOSE COMMITTED OUTSIDE THE OBJECT FOR WHICH THE CORPORATION IS CREATED IS *ULTRA VIRES*; CLARIFIED.—** Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers. Third persons dealing with corporations cannot assume that corporations have powers. It is up to those persons dealing with corporations to determine their competence as expressly defined by the law and their articles of incorporation. A corporation may exercise its powers only within those definitions. Corporate acts that are outside those

express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are *ultra vires*. The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation. This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code: x x x This court upheld the validity of corporate acts when those acts were shown to be clearly within the corporation's powers or were connected to the corporation's purposes. x x x Parties dealing with corporations cannot simply assume that their transaction is within the corporate powers. The acts of a corporation are still limited by its powers and purposes as provided in the law and its articles of incorporation. Acquiring shares in another corporation is not a means to create new powers for the acquiring corporation. Being a shareholder of another corporation does not automatically change the nature and purpose of a corporation's business. Appropriate amendments must be made either to the law or the articles of incorporation before a corporation can validly exercise powers outside those provided in law or the articles of incorporation. In other words, without an amendment, what is *ultra vires* before a corporation acquires shares in other corporations is still *ultra vires* after such acquisition.

**4. ID.; ID.; ID.; AS A RULE, THE CONTRACT EXECUTED BY A CORPORATION SHALL BE PRESUMED VALID IF ON ITS FACE ITS EXECUTION WAS NOT BEYOND THE POWERS OF THE CORPORATION TO DO; ELUCIDATED.—** This court has, in effect, created a presumption that corporate acts are valid if, on their face, the acts were within the corporation's powers or purposes. This presumption was explained as early as in 1915 in *Coleman v. Hotel De France* where this court ruled that contracts entered into by corporations in the exercise of their incidental powers are not *ultra vires*. *Coleman* involved a hotel's cancellation of an employment contract it executed with a gymnast. One of the hotel's contentions was the supposed *ultra vires* nature of the contract. It was executed outside its express and implied powers under the articles of incorporation. In ruling in favor of the contract's validity, this court considered the incidental

powers of the hotel to include the execution of employment contracts with entertainers for the purpose of providing its guests entertainment and increasing patronage. This court ruled that a contract executed by a corporation shall be presumed valid if on its face its execution was not beyond the powers of the corporation to do. x x x However, this should not be interpreted to mean that such presumption applies to all cases, even when the act in question is on its face beyond the corporation's power to do or when the evidence contradicts the presumption.

**5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS, CONSTRUED; CONCLUSIVE PRESUMPTIONS DISTINGUISHED FROM DISPUTABLE PRESUMPTIONS.—** Presumptions are "inference[s] as to the existence of a fact not actually known, arising from its usual connection with another which is known, or a conjecture based on past experience as to what course human affairs ordinarily take." Presumptions embody values and revealed behavioral expectations under a given set of circumstances. Presumptions may be conclusive or disputable. Conclusive presumptions are presumptions that may not be overturned by evidence, however strong the evidence is. They are made conclusive not because there is an established uniformity in behavior whenever identified circumstances arise. They are conclusive because they are declared as such under the law or the rules. Rule 131, Section 2 of the Rules of Court identifies two (2) conclusive presumptions: x x x On the other hand, disputable presumptions are presumptions that may be overcome by contrary evidence. They are disputable in recognition of the variability of human behavior. Presumptions are not always true. They may be wrong under certain circumstances, and courts are expected to apply them, keeping in mind the nuances of every experience that may render the expectations wrong. Thus, the application of disputable presumptions on a given circumstance must be based on the existence of certain facts on which they are meant to operate. "[P]resumptions are not allegations, nor do they supply their absence[.]" Presumptions are conclusions. They do not apply when there are no facts or allegations to support them. If the facts exist to set in motion the operation of a disputable presumption, courts may accept the presumption. However, contrary evidence may be presented to rebut the presumption. Courts cannot disregard contrary evidence offered to rebut

disputable presumptions. Disputable presumptions apply only in the absence of contrary evidence or explanations.

6. **MERCANTILE LAW; CORPORATIONS; CORPORATIONS ARE GIVEN SEPARATE PERSONALITIES TO ALLOW NATURAL PERSONS TO BALANCE THE RISKS OF BUSINESS AS THEY ACCUMULATE CAPITAL; WHEN PIERCING THE CORPORATE VEIL, PROPER; NOT APPLICABLE IN CASE AT BAR.—** The separate personality of corporations means that they are "vest[ed] [with] rights, powers, and attributes [of their own] as if they were natural persons[.]" Their assets and liabilities are their own and not their officers', shareholders', or another corporation's. In the same vein, the assets and liabilities of their officers and shareholders are not the corporations'. Obligations incurred by corporations are not obligations of their officers and shareholders. Obligations of officers and shareholders are not obligations of corporations. In other words, corporate interests are separate from the personal interests of the natural persons that comprise corporations. Corporations are given separate personalities to allow natural persons to balance the risks of business as they accumulate capital. They are, however, given limited competence as a means to protect the public from fraudulent acts that may be committed using the separate juridical personality given to corporations. x x x Corporate veil is pierced when the separate personality of the corporation is being used to perpetrate fraud, illegalities, and injustices. These instances have not been shown in this case. There is no evidence pointing to the possibility that petitioner used its separate personality to defraud third persons or commit illegal acts. Neither is there evidence to show that petitioner was merely a farce of a corporation. What has been shown instead was that petitioner, too, had been victimized by fraudulent and unauthorized acts of its own officers and directors.

7. **ID.; ID.; THE BOARD OF DIRECTORS OR TRUSTEES; THE BOARD OF (DIRECTORS) TRUSTEES MUST ACT AS A BODY IN ORDER TO EXERCISE CORPORATE POWERS; SUSTAINED.—** Being a juridical person, petitioner cannot conduct its business, make decisions, or act in any manner without action from its Board of Trustees. The Board of Trustees must act as a body in order to exercise corporate powers. Individual trustees are not clothed with corporate powers just

by being a trustee. Hence, the individual trustee cannot bind the corporation by himself or herself. The corporation may, however, delegate through a board resolution its corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation. The relationship between a corporation and its representatives is governed by the general principles of agency. Article 1317 of the Civil Code provides that there must be authority from the principal before anyone can act in his or her name: x x x Hence, without delegation by the board of directors or trustees, acts of a person—including those of the corporation's directors, trustees, shareholders, or officers — executed on behalf of the corporation are generally not binding on the corporation.

**8. CIVIL LAW; CONTRACTS; UNENFORCEABLE CONTRACT; CONTRACTS ENTERED INTO BY A PERSON WITHOUT AUTHORITY FROM A CORPORATION SHALL GENERALLY BE CONSIDERED *ULTRA VIRES* AND UNENFORCEABLE; CASE AT BAR.—** Contracts entered into in another's name without authority or valid legal representation are generally unenforceable. x x x The unenforceable status of contracts entered into by an unauthorized person on behalf of another is based on the basic principle that contracts must be consented to by both parties. There is no contract without meeting of the minds as to the subject matter and cause of the obligations created under the contract. Consent of a person cannot be presumed from representations of another, especially if obligations will be incurred as a result. Thus, authority is required to make actions made on his or her behalf binding on a person. Contracts entered into by persons without authority from the corporation shall generally be considered ultra vires and unenforceable against the corporation. Well-entrenched is the rule that this court, not being a trier of facts, is bound by the findings of fact of the trial courts and the Court of Appeals when such findings are supported by evidence on record. Hence, not having the proper board resolution to authorize Saturnino Petalcorin to execute the mortgage contracts for petitioner, the contracts he executed are unenforceable against petitioner. They cannot bind petitioner. However, personal liabilities may be incurred by directors who assented to such unauthorized act and by the person who contracted in excess of the limits of his or her

authority without the corporation's knowledge. x x x Unauthorized acts that are merely beyond the powers of the corporation under its articles of incorporation are not void ab initio. In *Pirovano, et al.*, this court explained that corporate acts may be *ultra vires* but not void. Corporate acts may be capable of ratification: x x x Thus, even though a person did not give another person authority to act on his or her behalf, the action may be enforced against him or her if it is shown that he or she ratified it or allowed the other person to act as if he or she had full authority to do so.

**9. ID.; ID.; ID.; RATIFICATION, CONSTRUED; RATIFICATION HAS THE EFFECT OF PLACING THE PRINCIPAL IN A POSITION AS IF HE OR SHE SIGNED THE ORIGINAL CONTRACT; NOT ESTABLISHED IN CASE AT BAR.—** Ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act. It converts the unauthorized act of an agent into an act of the principal. It cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract valid and enforceable. It is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act. Ratification has the effect of placing the principal in a position as if he or she signed the original contract. x x x Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits. However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own. "[It] cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent." x x x Ratification must be knowingly and voluntarily done. Petitioner's lack of knowledge about the mortgage executed in its name precludes an interpretation that there was any ratification on its part. x x x The rule that knowledge of an officer is considered knowledge of the corporation applies only when the officer is acting within the authority given to him or her by the corporation. x x x The public should be able to rely on and be protected from the representations of a corporate representative acting within the scope of his or her authority.

This is why an authorized officer's knowledge is considered knowledge of corporation. However, just as the public should be able to rely on and be protected from corporate representations, corporations should also be able to expect that they will not be bound by unauthorized actions made on their account. x x x Thus, knowledge should be actually communicated to the corporation through its authorized representatives. A corporation cannot be expected to act or not act on a knowledge that had not been communicated to it through an authorized representative. There can be no implied ratification without actual communication. Knowledge of the existence of contract must be brought to the corporation's representative who has authority to ratify it. Further, "the circumstances must be shown from which such knowledge may be presumed."

**10. MERCANTILE LAW; CORPORATION; CORPORATE POWERS; DOCTRINE OF APPARENT AUTHORITY; THE DOCTRINE OF APPARENT AUTHORITY DOES NOT APPLY IF THE PRINCIPAL DID NOT COMMIT ANY ACTS OR CONDUCT WHICH A THIRD PERSON KNEW AND RELIED UPON IN GOOD FAITH AS A RESULT OF THE EXERCISE OF REASONABLE PRUDENCE; PRESENT IN CASE AT BAR.—** The doctrine of apparent authority does not go into the question of the corporation's competence or power to do a particular act. It involves the question of whether the officer has the power or is clothed with the appearance of having the power to act for the corporation. A finding that there is apparent authority is not the same as a finding that the corporate act in question is within the corporation's limited powers. The rule on apparent authority is based on the principle of estoppel. x x x A corporation is estopped by its silence and acts of recognition because we recognize that there is information asymmetry between third persons who have little to no information as to what happens during corporate meetings, and the corporate officers, directors, and representatives who are insiders to corporate affairs. x x x There can be no apparent authority and the corporation cannot be estopped from denying the binding affect of an act when there is no evidence pointing to similar acts and other circumstances that can be interpreted as the corporation holding out a representative as having authority to contract on its behalf. In *Advance Paper Corporation v. Arma Traders Corporation*,

this court had the occasion to say: The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. x x x Saturnino Petalcorin's authority to transact on behalf of petitioner cannot be presumed based on a Secretary's Certificate and excerpt from the minutes of the alleged board meeting that were found to have been simulated. These documents cannot be considered as the corporate acts that held out Saturnino Petalcorin as petitioner's authorized representative for mortgage transactions. They were not supported by an actual board meeting.

**11. CIVIL LAW; CONTRACTS; NOTARIZATION; THE PRESUMPTION OF REGULARITY AND AUTHENTICITY OF A NOTARIZED DOCUMENT MAY BE REBUTTED BY "STRONG, COMPLETE AND CONCLUSIVE PROOF" TO THE CONTRARY; ESTABLISHED IN CASE AT BAR.—** Notarization creates a presumption of regularity and authenticity on the document. This presumption may be rebutted by "strong, complete and conclusive proof" to the contrary. While notarial acknowledgment "attaches full faith and credit to the document concerned[,]" it does not give the document its validity or binding effect. When there is evidence showing that the document is invalid, the presumption of regularity or authenticity is not applicable. In *Basilio v. Court of Appeals*, this court was convinced that the purported signatory on a deed of sale was not as represented, despite testimony from the notary public that the signatory appeared before him and signed the instrument. x x x In *Suntay v. Court of Appeals*, this court held that a notarized deed of sale was void because it was a mere sham. It was not intended to have any effect between the parties. x x x Since the notarized Secretary's Certificate was found to have been issued without a supporting board resolution, it produced no effect. It is not binding upon petitioner. It should not have been relied on by respondent especially given its status as a bank.

**12. MERCANTILE LAW; BANKING INSTITUTION; BANKS ARE REQUIRED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN THEIR TRANSACTIONS; RATIONALE.—** The banking institution is "impressed with public interest" such that the public's faith is "of paramount importance." Thus, banks are required to exercise the highest

degree of diligence in their transactions. In *China Banking Corporation v. Lagon*, this court found that the bank was not a mortgagee in good faith for its failure to question the due execution of a Special Power of Attorney that was presented to it in relation to a mortgage contract. For its failure to exercise the degree of diligence required of banks, respondent cannot claim good faith in the execution of the mortgage contracts with Saturnino Petalcorin. Respondent's witness, Daciano Paguio, Jr., testified that there was no board resolution authorizing Saturnino Petalcorin to act on behalf of petitioner. Respondent did not inquire further as to Saturnino Petalcorin's authority. Banks cannot rely on assumptions. This will be contrary to the high standard of diligence required of them.

**13. CIVIL LAW; PROPERTY; LAND REGISTRATION; ANNOTATIONS OF ADVERSE CLAIMS ON THE CERTIFICATES OF TITLE TO PROPERTIES OPERATE AS CONSTRUCTIVE NOTICE ONLY TO THIRD PARTIES, NOT TO THE COURT OR THE REGISTERED OWNER.—** Annotations of adverse claims on certificates of title to properties operate as constructive notice only to third parties—not to the court or the registered owner. x x x Annotations are merely claims of interest or claims of the legal nature and incidents of relationship between the person whose name appears on the document and the person who caused the annotation. It does not say anything about the validity of the claim or convert a defective claim or document into a valid one. These claims may be proved or disproved during trial. Thus, annotations are not conclusive upon courts or upon owners who may not have reason to doubt the security of their claim as their properties' title holders.

**APPEARANCES OF COUNSEL**

*Gaviola Law Offices* for petitioner.
*Ongkiko Kalaw Manhit & Acorda Law Offices* for respondents.

## D E C I S I O N

**LEONEN, *J.*:**

Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf.

This is a Petition for Review on Certiorari[1] of the Court of Appeals' December 17, 2009 Decision[2] and December 20, 2010 Resolution.[3] The Court of Appeals reversed the Cagayan De Oro City trial court's and the Iligan City trial court's Decisions to nullify mortgage contracts involving University of Mindanao's properties.[4]

University of Mindanao is an educational institution. For the year 1982, its Board of Trustees was chaired by Guillermo B. Torres. His wife, Dolores P. Torres, sat as University of Mindanao's Assistant Treasurer.[5]

Before 1982, Guillermo B. Torres and Dolores P. Torres incorporated and operated two (2) thrift banks: (1) First Iligan Savings & Loan Association, Inc. (FISLAI); and (2) Davao Savings and Loan Association, Inc. (DSLAI). Guillermo B. Torres chaired both thrift banks. He acted as FISLAI's President, while his wife, Dolores P. Torres, acted as DSLAI's President and FISLAI's Treasurer.[6]

---

[1] *Rollo*, pp. 69-98.

[2] *Id*. at 13-45. The Decision was penned by Associate Justice Edgardo A. Camello (Chair) and concurred in by Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba of the Twenty-second Division.

[3] *Id*. at 63-67. The Resolution was penned by Associate Justice Edgardo A. Camello (Chair) and concurred in by Associate Justices Edgardo T. Lloren and Leoncia R. Dimagiba of the Former Twenty-second Division.

[4] *Id*. at 25, 27, and 44, Court of Appeals Decision.

[5] *Id*. at 14.

[6] *Id*.

Upon Guillermo B. Torres' request, Bangko Sentral ng Pilipinas issued a ₱1.9 million standby emergency credit to FISLAI. The release of standby emergency credit was evidenced by three (3) promissory notes dated February 8, 1982, April 7, 1982, and May 4, 1982 in the amounts of ₱500,000.00, ₱600,000.00, and ₱800,000.00, respectively. All these promissory notes were signed by Guillermo B. Torres, and were co-signed by either his wife, Dolores P. Torres, or FISLAI's Special Assistant to the President, Edmundo G. Ramos, Jr.[7]

On May 25, 1982, University of Mindanao's Vice President for Finance, Saturnino Petalcorin, executed a deed of real estate mortgage over University of Mindanao's property in Cagayan de Oro City (covered by Transfer Certificate of Title No. T-14345) in favor of Bangko Sentral ng Pilipinas.[8] "The mortgage served as security for FISLAI's ₱1.9 Million loan[.]"[9] It was allegedly executed on University of Mindanao's behalf.[10]

As proof of his authority to execute a real estate mortgage for University of Mindanao, Saturnino Petalcorin showed a Secretary's Certificate signed on April 13, 1982 by University of Mindanao's Corporate Secretary, Aurora de Leon.[11] The Secretary's Certificate stated:

> That at the regular meeting of the Board of Trustees of the aforesaid corporation [University of Mindanao] duly convened on March 30, 1982, at which a quorum was present, the following resolution was unanimously adopted:
>
> "Resolved that the University of Mindanao, Inc. be and is hereby authorized, to mortgage real estate properties with the Central Bank of the Philippines to serve as security for the credit facility of First Iligan Savings and Loan Association, hereby authorizing the President and/or Vice-president for

---

[7] *Id*. at 14-15.

[8] *Id*. at 15.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 16.

Finance, Saturnino R. Petalcorin of the University of Mindanao, Inc. to sign, execute and deliver the covering mortgage document or any other documents which may be proper[l]y required."[12]

The Secretary's Certificate was supported by an excerpt from the minutes of the January 19, 1982 alleged meeting of University of Mindanao's Board of Trustees. The excerpt was certified by Aurora de Leon on March 13, 1982 to be a true copy of University of Mindanao's records on file.[13] The excerpt reads:

3 – Other Matters:

(a) Cagayan de Oro and Iligan properties:
Resolution No. 82-1-8

Authorizing the Chairman to appoint Saturnino R. Petalcorin, Vice-President for Finance, to represent the University of Mindanao to transact, transfer, convey, lease, mortgage, or otherwise hypothecate any or all of the following properties situated at Cagayan de Oro and Iligan City and authorizing further Mr. Petalcorin to sign any or all documents relative thereto:

1. A parcel of land situated at Cagayan de Oro City, covered and technically described in TRANSFER CERTIFICATE OF TITLE No. T-14345 of the Registry of Deeds of Cagayan de Oro City;
2. A parcel of land situated at Iligan City, covered and technically described in TRANSFER CERTIFICATE OF TITLE NO. T-15696 (a.t.) of the Registry of Deeds of Iligan City; and
3. A parcel of land situated at Iligan City, covered and technically described in TRANSFER CERTIFICATE OF TITLE NO. T-15697 (a.f.) of the Registry of Deeds of Iligan City.[14]

The mortgage deed executed by Saturnino Petalcorin in favor of Bangko Sentral ng Pilipinas was annotated on the certificate of title of the Cagayan de Oro City property (Transfer Certificate of Title No. 14345) on June 25, 1982. Aurora de Leon's certification was also annotated on the Cagayan de Oro City

---

[12] *Id*.

[13] *Id*.

[14] *Id*. at 16-17.

property's certificate of title (Transfer Certificate of Title No. 14345).[15]

On October 21, 1982, Bangko Sentral ng Pilipinas granted FISLAI an additional loan of ₱620,700.00. Guillermo B. Torres and Edmundo Ramos executed a promissory note on October 21, 1982 to cover that amount.[16]

On November 5, 1982, Saturnino Petalcorin executed another deed of real estate mortgage, allegedly on behalf of University of Mindanao, over its two properties in Iligan City. This mortgage served as additional security for FISLAI's loans. The two Iligan City properties were covered by Transfer Certificates of Title Nos. T-15696 and T-15697.[17]

On January 17, 1983, Bangko Sentral ng Pilipinas' mortgage lien over the Iligan City properties and Aurora de Leon's certification were annotated on Transfer Certificates of Title Nos. T-15696 and T-15697.[18] On January 18, 1983, Bangko Sentral ng Pilipinas' mortgage lien over the Iligan City properties was also annotated on the tax declarations covering the Iligan City properties.[19]

Bangko Sentral ng Pilipinas also granted emergency advances to DSLAI on May 27, 1983 and on August 20, 1984 in the amounts of ₱1,633,900.00 and ₱6,489,000.00, respectively.[20]

On January 11, 1985, FISLAI, DSLAI, and Land Bank of the Philippines entered into a Memorandum of Agreement intended to rehabilitate the thrift banks, which had been suffering from their depositors' heavy withdrawals. Among the terms of the agreement was the merger of FISLAI and DSLAI, with

---

[15] *Id*. at 17.

[16] *Id*. at 15.

[17] *Id*.

[18] *Id*. at 17.

[19] *Id*.

[20] *Id*.

DSLAI as the surviving corporation. DSLAI later became known as Mindanao Savings and Loan Association, Inc. (MSLAI).[21]

Guillermo B. Torres died on March 2, 1989.[22]

MSLAI failed to recover from its losses and was liquidated on May 24, 1991.[23]

On June 18, 1999, Bangko Sentral ng Pilipinas sent a letter to University of Mindanao, informing it that the bank would foreclose its properties if MSLAI's total outstanding obligation of ₱12,534,907.73 remained unpaid.[24]

In its reply to Bangko Sentral ng Pilipinas' June 18, 1999 letter, University of Mindanao, through its Vice President for Accounting, Gloria E. Detoya, denied that University of Mindanao's properties were mortgaged. It also denied having received any loan proceeds from Bangko Sentral ng Pilipinas.[25]

On July 16, 1999, University of Mindanao filed two Complaints for nullification and cancellation of mortgage. One Complaint was filed before the Regional Trial Court of Cagayan de Oro City, and the other Complaint was filed before the Regional Trial Court of Iligan City.[26]

University of Mindanao alleged in its Complaints that it did not obtain any loan from Bangko Sentral ng Pilipinas. It also did not receive any loan proceeds from the bank.[27]

University of Mindanao also alleged that Aurora de Leon's certification was anomalous. It never authorized Saturnino Petalcorin to execute real estate mortgage contracts involving its properties to secure FISLAI's debts. It never ratified the

---

[21] *Id*. at 18.

[22] *Id*. at 19.

[23] *Id*.

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

[25] *Id*. at 20.

[26] *Id*.

[27] *Id*. at 21.

execution of the mortgage contracts. Moreover, as an educational institution, it cannot mortgage its properties to secure another person's debts.[28]

On November 23, 2001, the Regional Trial Court of Cagayan de Oro City rendered a Decision in favor of University of Mindanao,[29] thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendants:
>
> 1. DECLARING the real estate mortgage Saturnino R. Petalcorin executed in favor of BANGKO SENTRAL NG PILIPINAS involving Lot 421-A located in Cagayan de Oro City with an area of 482 square meters covered by TCT No. T-14345 as annuled [sic];
>
> 2. ORDERING the Register of Deeds of Cagayan de Oro City to cancel Entry No. 9951 and Entry No. 9952 annotated at the back of said TCT No. T-14345, Registry of Deeds of Cagayan de Oro City;
>
> Prayer for attorney's fee [sic] is hereby denied there being no proof that in demanding payment of the emergency loan, defendant BANGKO SENTRAL NG PILIPINAS was motivated by evident bad faith,
>
> SO ORDERED.[30] (Citation omitted)

The Regional Trial Court of Cagayan de Oro City found that there was no board resolution giving Saturnino Petalcorin authority to execute mortgage contracts on behalf of University of Mindanao. The Cagayan de Oro City trial court gave weight to Aurora de Leon's testimony that University of Mindanao's Board of Trustees did not issue a board resolution that would support the Secretary's Certificate she issued. She testified that she signed the Secretary's Certificate only upon Guillermo B. Torres' orders.[31]

---

[28] *Id*.

[29] *Id*. at 27.

[30] *Id*. at 27-28.

[31] *Id*. at 28.

Saturnino Petalcorin testified that he had no authority to execute a mortgage contract on University of Mindanao's behalf. He merely executed the contract because of Guillermo B. Torres' request.[32]

Bangko Sentral ng Pilipinas' witness Daciano Pagui, Jr. also admitted that there was no board resolution giving Saturnino Petalcorin authority to execute mortgage contracts on behalf of University of Mindanao.[33]

The Regional Trial Court of Cagayan de Oro City ruled that Saturnino Petalcorin was not authorized to execute mortgage contracts for University of Mindanao. Hence, the mortgage of University of Mindanao's Cagayan de Oro City property was unenforceable. Saturnino Petalcorin's unauthorized acts should be annulled.[34]

Similarly, the Regional Trial Court of Iligan City rendered a Decision on December 7, 2001 in favor of University of Mindanao.[35] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:
>
> 1. Nullifying and canceling [sic] the subject Deed of Real Estate Mortgage dated November 5, 1982 for being unenforceable or void contract;
>
> 2. Ordering the Office of the Register of Deeds of Iligan City to cancel the entries on TCT No. T-15696 and TCT No. T-15697 with respect to the aforesaid Deed of Real Estate Mortgage dated November 5, 1982 and all other entries related thereto;
>
> 3. Ordering the defendant Bangko Sentral ng Pilipinas to return the owner's duplicate copies of TCT No. T-15696 and TCT No. 15697 to the plaintiff;

---

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 23.

4. Nullifying the subject [f]oreclosure [p]roceedings and the [a]uction [s]ale conducted by defendant Atty. Gerardo Paguio, Jr. on October 8, 1999 including all the acts subsequent thereto and ordering the Register of Deeds of Iligan City not to register any Certificate of Sale pursuant to the said auction sale nor make any transfer of the corresponding titles, and if already registered and transferred, to cancel all the said entries in TCT No. T-15696 and TCT No. T-15697 and/or cancel the corresponding new TCTs in the name of defendant Bangko Sentral ng Pilipinas;

5. Making the Preliminary Injunction per Order of this Court dated October 13, 2000 permanent.

No pronouncement as to costs.[36] (Citation omitted)

The Iligan City trial court found that the Secretary's Certificate issued by Aurora de Leon was fictitious[37] and irregular for being unnumbered.[38] It also did not specify the identity, description, or location of the mortgaged properties.[39]

The Iligan City trial court gave credence to Aurora de Leon's testimony that the University of Mindanao's Board of Trustees did not take up the documents in its meetings. Saturnino Petalcorin corroborated her testimony.[40]

The Iligan City trial court ruled that the lack of a board resolution authorizing Saturnino Petalcorin to execute documents of mortgage on behalf of University of Mindanao made the real estate mortgage contract unenforceable under Article 1403[41]

---

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

[37] *Id*. at 25.

[38] *Id*. at 24.

[39] *Id*.

[40] *Id*.

[41] CIVIL CODE, Art. 1403 provides:

ART. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

of the Civil Code.[42] The mortgage contract and the subsequent acts of foreclosure and auction sale were void because the mortgage contract was executed without University of Mindanao's authority.[43]

The Iligan City trial court also ruled that the annotations on the titles of University of Mindanao's properties do not operate as notice to the University because annotations only bind third parties and not owners.[44] Further, Bangko Sentral ng Pilipinas' right to foreclose the University of Mindanao's properties had already prescribed.[45]

---

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

[42] *Rollo*, p. 25, Court of Appeals Decision.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 26.

Bangko Sentral ng Pilipinas separately appealed the Decisions of both the Cagayan de Oro City and the Iligan City trial courts.[46]

After consolidating both cases, the Court of Appeals issued a Decision on December 17, 2009 in favor of Bangko Sentral ng Pilipinas, thus:

> **FOR THE REASONS STATED,** the Decision dated 23 November 2001 of the Regional Trial Court of Cagayan de Oro City, Branch 24 in Civil Case No. 99-414 and the Decision dated 7 December 2001 of the Regional Trial Court of Iligan City, Branch 1 in Civil Case No. 4790 are **REVERSED** and **SET ASIDE.** The Complaints in both cases before the trial courts are **DISMISSED.** The Writ of Preliminary Injunction issued by the Regional Trial Court of Iligan City, Branch 1 in Civil Case No. 4790 is **LIFTED** and **SET ASIDE.**
>
> **SO ORDERED**.[47]

The Court of Appeals ruled that "[a]lthough BSP failed to prove that the UM Board of Trustees actually passed a Board Resolution authorizing Petalcorin to mortgage the subject real properties,"[48] Aurora de Leon's Secretary's Certificate "clothed Petalcorin with apparent and ostensible authority to execute the mortgage deed on its behalf[.]"[49] Bangko Sentral ng Pilipinas merely relied in good faith on the Secretary's Certificate.[50] University of Mindanao is estopped from denying Saturnino Petalcorin's authority.[51]

Moreover, the Secretary's Certificate was notarized. This meant that it enjoyed the presumption of regularity as to the truth of its statements and authenticity of the signatures.[52] Thus,

---

[46] *Id*. at 26 and 29.

[47] *Id*. at 44.

[48] *Id*. at 32.

[49] *Id*.

[50] *Id*. at 32-33.

[51] *Id*. at 33.

[52] *Id*. at 34.

"BSP cannot be faulted for relying on the [Secretary's Certificate.]"[53]

The Court of Appeals also ruled that since University of Mindanao's officers, Guillermo B. Torres and his wife, Dolores P. Torres, signed the promissory notes, University of Mindanao was presumed to have knowledge of the transaction.[54] Knowledge of an officer in relation to matters within the scope of his or her authority is notice to the corporation.[55]

The annotations on University of Mindanao's certificates of title also operate as constructive notice to it that its properties were mortgaged.[56] Its failure to disown the mortgages for more than a decade was implied ratification.[57]

The Court of Appeals also ruled that Bangko Sentral ng Pilipinas' action for foreclosure had not yet prescribed because the due date extensions that Bangko Sentral ng Pilipinas granted to FISLAI extended the due date of payment to five (5) years from February 8, 1985.[58] The bank's demand letter to Dolores P. Torres on June 18, 1999 also interrupted the prescriptive period.[59]

University of Mindanao and Bangko Sentral ng Pilipinas filed a Motion for Reconsideration[60] and Motion for Partial Reconsideration respectively of the Court of Appeals' Decision. On December 20, 2010, the Court of Appeals issued a Resolution, thus:

---

[53] *Id*. at 36.

[54] *Id*. at 37-38.

[55] *Id*. at 38.

[56] *Id*. at 40.

[57] *Id*.

[58] *Id*. at 42.

[59] *Id*.

[60] *Id*. at 46-58.

Acting on the foregoing incidents, the Court **RESOLVES** to:

1. **GRANT** the appellant's twin motions for extension of time to file comment/opposition and **NOTE** the Comment on the appellee's Motion for Reconsideration it subsequently filed on June 23, 2010;

2. **GRANT** the appellee's three (3) motions for extension of time to file comment/opposition and **NOTE** the Comment on the appellant's Motion for Partial Reconsideration it filed on July 26, 2010;

3. **NOTE** the appellant's "Motion for Leave to File Attached Reply Dated August 11, 2010" filed on August 13, 2010 and **DENY** the attached "Reply to Comment Dated July 26, 2010";

4. **DENY** the appellee's Motion for Reconsideration as it does not offer any arguments sufficiently meritorious to warrant modification or reversal of the Court's 17 December 2009 Decision. The Court finds that there is no compelling reason to reconsider its ruling; and

5. **GRANT** the appellant's Motion for Partial Reconsideration, as the Court finds it meritorious, considering that it ruled in its Decision that "BSP can still foreclose on the UM's real property in Cagayan de Oro City covered by TCT No. T-14345." It then follows that the injunctive writ issued by the RTC of Cagayan de Oro City, Branch 24 must be lifted. The Court's 17 December 2009 Decision is accordingly **MODIFIED** and **AMENDED** to read as follows:

> "**FOR THE REASONS STATED,** the Decision dated 23 November 2001 of the Regional Trial Court of Cagayan de Oro City, Branch 24 in Civil Case No. 99-414 and the Decision dated 7 December 2001 of the Regional Trial Court of Iligan City, Branch 1 in Civil Case No. 4790 are **REVERSED** and **SET ASIDE.** The Complaints in both cases before the trial courts are **DISMISSED.** The Writs of Preliminary Injunction issued by the Regional Trial Court of Iligan City, Branch 1 in Civil Case No. 4790 and in the Regional

> Trial Court of Cagayan de Oro City, Branch 24 in Civil Case No. 99-414 are **LIFTED** and **SET ASIDE.**"
>
> **SO ORDERED**.[61] (Citation omitted)

Hence, University of Mindanao filed this Petition for Review.

The issues for resolution are:

First, whether respondent Bangko Sentral ng Pilipinas' action to foreclose the mortgaged properties had already prescribed; and

Second, whether petitioner University of Mindanao is bound by the real estate mortgage contracts executed by Saturnino Petalcorin.

We grant the Petition.

I

Petitioner argues that respondent's action to foreclose its mortgaged properties had already prescribed.

Petitioner is mistaken.

Prescription is the mode of acquiring or losing rights through the lapse of time.[62] Its purpose is "to protect the diligent and vigilant, not those who sleep on their rights."[63]

The prescriptive period for actions on mortgages is ten (10) years from the day they may be brought.[64] Actions on mortgages

---

[61] *Id*. at 65-67, Court of Appeals Resolution.

[62] CIVIL CODE, Art.1106 provides:

ART. 1106. By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.

In the same way, rights and conditions are lost by prescription.

[63] *Vda. de Rigonan v. Derecho*, 502 Phil. 202, 209 (2005) [Per *J*. Panganiban, Third Division].

[64] CIVIL CODE, Arts.1142, 1144, and 1150 provide:

ART. 1142. A mortgage action prescribes after ten years.

may be brought not upon the execution of the mortgage contract but upon default in payment of the obligation secured by the mortgage.[65]

A debtor is considered in default when he or she fails to pay the obligation on due date and, subject to exceptions, after demands for payment were made by the creditor. Article 1169 of the Civil Code provides:

ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

Article 1193 of the Civil Code provides that an obligation is demandable only upon due date. It provides:

---

. . . .

ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

. . . .

ART. 1150. The time for prescription for all kinds of actions, where there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

[65] *See Cando v. Sps. Olazo*, 547 Phil. 630, 637 (2007) [Per *J.* Tinga, Second Division]; *See also Tambunting, Jr. v. Sps. Sumabat*, 507 Phil. 94, 99-100 (2005) [Per *J.* Corona, Third Division].

ART. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

In other words, as a general rule, a person defaults and prescriptive period for action runs when (1) the obligation becomes due and demandable; and (2) demand for payment has been made.

The prescriptive period neither runs from the date of the execution of a contract nor does the prescriptive period necessarily run on the date when the loan becomes due and demandable.[66] Prescriptive period runs from the date of demand,[67] subject to certain exceptions.

In other words, ten (10) years may lapse from the date of the execution of contract, without barring a cause of action on the mortgage when there is a gap between the period of execution of the contract and the due date or between the due date and the demand date in cases when demand is necessary.[68]

The mortgage contracts in this case were executed by Saturnino Petalcorin in 1982. The maturity dates of FISLAI's loans were repeatedly extended until the loans became due

---

[66] *See De la Rosa v. Bank of the Philippine Islands*, 51 Phil. 926, 929 (1924) [Per *J*. Romualdez, *En Banc*].

[67] *See De la Rosa v. Bank of the Philippine Islands*, 51 Phil. 926, 929 (1924) [Per *J*. Romualdez, *En Banc*]; *See also Philippine Charter Insurance Corporation v. Central Colleges of the Philippines, et al.*, 682 Phil. 507, 520-521 (2012) [Per *J*. Mendoza, Third Division].

[68] *See also Mesina v. Garcia*, 538 Phil. 920, 930-931 (2006) [Per *J*. Chico-Nazario, First Division], on the interruption of prescriptive period.

and demandable only in 1990.[69] Respondent informed petitioner of its decision to foreclose its properties and demanded payment in 1999.

The running of the prescriptive period of respondent's action on the mortgages did not start when it executed the mortgage contracts with Saturnino Petalcorin in 1982.

The prescriptive period for filing an action may run either (1) from 1990 when the loan became due, if the obligation was covered by the exceptions under Article 1169 of the Civil Code; (2) or from 1999 when respondent demanded payment, if the obligation was not covered by the exceptions under Article 1169 of the Civil Code.

In either case, respondent's Complaint with cause of action based on the mortgage contract was filed well within the prescriptive period.

---

[69] *Rollo*, pp. 41-42, Court of Appeals Decision. The following Monetary Board Resolutions granted extension of the maturity date of FISLAI's loans:

1. Monetary Board Resolution No. 792 dated April 23, 1982 (payable on demand but not to exceed 60 days);
2. Monetary Board Resolution No. 1127 dated June 18, 1982 (60-day extension);
3. Monetary Board Resolution No. 1950 dated October 22, 1982 (180-day extension);
4. Monetary Board Resolution No. 2137 dated November 19, 1982 (180-day extension);
5. Monetary Board Resolution No. 2307 dated December 17, 1982 (180-day extension);
6. Monetary Board Resolution No. 893 dated May 27, 1983 (180-day extension);
7. Monetary Board Resolution No. 142 dated February 8, 1985 (approval of FISLAI and DSLAI's rehabilitation plan, which made loans due after five years)

The loans became due in 1990. Bangko Sentral ng Pilipinas' demand letter to petitioner dated June 18, 1999 interrupted the prescriptive period.

Given the termination of all traces of FISLAI's existence,[70] demand may have been rendered unnecessary under Article 1169(3)[71] of the Civil Code. Granting that this is the case, respondent would have had ten (10) years from due date in 1990 or until 2000 to institute an action on the mortgage contract.

However, under Article 1155[72] of the Civil Code, prescription of actions may be interrupted by (1) the filing of a court action; (2) a written extrajudicial demand; and (3) the written acknowledgment of the debt by the debtor.

Therefore, the running of the prescriptive period was interrupted when respondent sent its demand letter to petitioner on June 18, 1999. This eventually led to petitioner's filing of its annulment of mortgage complaints before the Regional Trial Courts of Iligan City and Cagayan De Oro City on July 16, 1999.

Assuming that demand was necessary, respondent's action was within the ten (10)-year prescriptive period. Respondent

---

[70] FISLAI was merged with DSLAI, with DSLAI as the surviving corporation. DSLAI became known later as MSLAI. MSLAI was liquidated in 1991.

[71] CIVIL CODE, Art.1169 provides:

ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

. . . . . .

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

[72] CIVIL CODE, Art. 1155 provides:

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

*See Sps. Larrobis, Jr. v. Philippine Veterans Bank*, 483 Phil. 33, 48 (2004) [Per *J.* Austria-Martinez, Second Division]; *Development Bank of the Philippines v. Prudential Bank*, 512 Phil. 267, 280 (2005) [Per *J.* Corona, Third Division].

demanded payment of the loans in 1999 and filed an action in the same year.

II

Petitioner argues that the execution of the mortgage contract was ultra vires. As an educational institution, it may not secure the loans of third persons.[73] Securing loans of third persons is not among the purposes for which petitioner was established.[74]

Petitioner is correct.

Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers. Third persons dealing with corporations cannot assume that corporations have powers. It is up to those persons dealing with corporations to determine their competence as expressly defined by the law and their articles of incorporation.[75]

A corporation may exercise its powers only within those definitions. Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created"[76] are ultra vires.

The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under

---

[73] *Rollo*, p. 80, University of Mindanao, Inc.'s Petition.

[74] *Id*. at 82.

[75] CORP. CODE, Sec. 45 provides:

SEC. 45. *Ultra vires acts of corporations.*—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

[76] *Republic v. Acoje Mining Company, Inc.*, 117 Phil. 379, 383 (1963) [Per *J*. Bautista Angelo, *En Banc*].

a corporation's articles of incorporation.[77] This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code:

SEC. 36. *Corporate powers and capacity.*—Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;
3. To adopt and use a corporate seal;
4. To amend its articles of incorporation in accordance with the provisions of this Code;
5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code;
6. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;
7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
8. To enter into merger or consolidation with other corporations as provided in this Code;
9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: *Provided,* That no corporation, domestic or foreign, shall give donations in aid of any

---

[77] CORP. CODE, Sec. 45; *See also Republic v. Acoje Mining Company, Inc.*, 117 Phil. 379, 383 (1963) [Per *J.* Bautista Angelo, *En Banc*].

political party or candidate or for purposes of partisan political activity;

10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees; and

11. *To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation*. (Emphasis supplied)

*Montelibano, et al. v. Bacolod-Murcia Milling Co., Inc.*[78] stated the test to determine if a corporate act is in accordance with its purposes:

It is a question, therefore, in each case, of the *logical relation of the act to the corporate purpose expressed in the charter.* If that act is one which is lawful in itself, and not otherwise prohibited, is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends, *in a substantial, and not in a remote and fanciful, sense,* it may fairly be considered within charter powers. The test to be applied is whether the act in question is in *direct and immediate furtherance of the corporation's business, fairly incident to the express powers and reasonably necessary to their exercise*. If so, the corporation has the power to do it; otherwise, not.[79] (Emphasis supplied)

As an educational institution, petitioner serves:

a. To establish, conduct and operate a college or colleges, and/or university;

b. To acquire properties, real and/or personal, in connection with the establishment and operation of such college or colleges;

c. To do and perform the various and sundry acts and things permitted by the laws of the Philippines unto corporations like classes and kinds;

d. To engage in agricultural, industrial, and/or commercial pursuits in line with educational program of the corporation

---

[78] 115 Phil. 18 (1962) [Per *J*. J. B. L. Reyes, *En Banc*].

[79] *Id*. at 25, *quoting* 6 FLETCHER CYC. CORP. 266-268 (1950).

and to acquire all properties, real and personal[,] necessary for the purposes[;]

e. To establish, operate, and/or acquire broadcasting and television stations also in line with the educational program of the corporation and for such other purposes as the Board of Trustees may determine from time to time;

f. To undertake housing projects of faculty members and employees, and to acquire real estates for this purpose;

g. To establish, conduct and operate and/or invest in educational foundations; [As amended on December 15, 1965][;]

h. To establish, conduct and operate housing and dental schools, medical facilities and other related undertakings;

i. To invest in other corporations. [As amended on December 9, 1998]. [Amended Articles of Incorporation of the University of Mindanao, Inc. – the Petitioner].[80]

Petitioner does not have the power to mortgage its properties in order to secure loans of other persons. As an educational institution, it is limited to developing human capital through formal instruction. It is not a corporation engaged in the business of securing loans of others.

Hiring professors, instructors, and personnel; acquiring equipment and real estate; establishing housing facilities for personnel and students; hiring a concessionaire; and other activities that can be directly connected to the operations and conduct of the education business may constitute the necessary and incidental acts of an educational institution.

Securing FISLAI's loans by mortgaging petitioner's properties does not appear to have even the remotest connection to the operations of petitioner as an educational institution. Securing loans is not an adjunct of the educational institution's conduct of business.[81] It does not appear that securing third-party loans

---

[80] *Rollo*, p. 81, University of Mindanao, Inc.'s Petition.

[81] *Cf. Republic v. Acoje Mining Company, Inc.*, 117 Phil. 379, 383 (1963) [Per *J*. Bautista Angelo, *En Banc*].

was necessary to maintain petitioner's business of providing instruction to individuals.

This court upheld the validity of corporate acts when those acts were shown to be clearly within the corporation's powers or were connected to the corporation's purposes.

In *Pirovano, et al. v. De la Rama Steamship Co.*,[82] this court declared valid the donation given to the children of a deceased person who contributed to the growth of the corporation.[83] This court found that this donation was within the broad scope of powers and purposes of the corporation to "aid in any other manner any person . . . in which any interest is held by this corporation or in the affairs or prosperity of which this corporation has a lawful interest."[84]

In *Twin Towers Condominium Corporation v. Court of Appeals, et al.*,[85] this court declared valid a rule by Twin Towers Condominium denying delinquent members the right to use condominium facilities.[86] This court ruled that the condominium's power to promulgate rules on the use of facilities and to enforce provisions of the Master Deed was clear in the Condominium Act, Master Deed, and By-laws of the condominium.[87] Moreover, the promulgation of such rule was "reasonably necessary" to attain the purposes of the condominium project.[88]

This court has, in effect, created a presumption that corporate acts are valid if, on their face, the acts were within the corporation's powers or purposes. This presumption was explained as early as in 1915 in *Coleman v. Hotel De France*[89]

---

[82] 96 Phil. 335 (1954) [Per J. Bautista Angelo, *En Banc*].

[83] *Id*. at 367.

[84] *Id*. at 355.

[85] 446 Phil. 280 (2003) [Per J. Carpio, First Division].

[86] *Id*. at 303-304.

[87] *Id*. at 305-307.

[88] *Id*. at 307.

[89] 29 Phil. 323 (1915) [Per J. Carson, *En Banc*].

where this court ruled that contracts entered into by corporations in the exercise of their incidental powers are not ultra vires.[90]

*Coleman* involved a hotel's cancellation of an employment contract it executed with a gymnast. One of the hotel's contentions was the supposed ultra vires nature of the contract. It was executed outside its express and implied powers under the articles of incorporation.[91]

In ruling in favor of the contract's validity, this court considered the incidental powers of the hotel to include the execution of employment contracts with entertainers for the purpose of providing its guests entertainment and increasing patronage.[92]

This court ruled that a contract executed by a corporation shall be presumed valid if on its face its execution was not beyond the powers of the corporation to do.[93] Thus:

> When a contract is not on its face necessarily beyond the scope of the power of the corporation by which it was made, it will, in the absence of proof to the contrary, be presumed to be valid. Corporations are presumed to contract within their powers. The doctrine of ultra vires, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong.[94]

However, this should not be interpreted to mean that such presumption applies to all cases, even when the act in question is on its face beyond the corporation's power to do or when the evidence contradicts the presumption.

---

[90] *Id*. at 326.

[91] *Id*. at 324-326.

[92] *Id*. at 326-327.

[93] *Id*. at 326.

[94] *Id*., *quoting Chicago, Rock Island & Pacific R. R. Co. v. Union Pacific Ry. Co.*, 47 Fed. Rep. 15, 22, *which in turn quoted Railway Co. v. McCarthy*, 96 U.S. 267.

Presumptions are "inference[s] as to the existence of a fact not actually known, arising from its usual connection with another which is known, or a conjecture based on past experience as to what course human affairs ordinarily take."[95] Presumptions embody values and revealed behavioral expectations under a given set of circumstances.

Presumptions may be conclusive[96] or disputable.[97]

Conclusive presumptions are presumptions that may not be overturned by evidence, however strong the evidence is.[98] They are made conclusive not because there is an established uniformity in behavior whenever identified circumstances arise. They are conclusive because they are declared as such under the law or the rules. Rule 131, Section 2 of the Rules of Court identifies two (2) conclusive presumptions:

---

[95] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 595 [Per J. Cruz, First Division], *citing* 6 Manuel V. Moran, *COMMENTS ON THE RULES OF COURT* 12 (1980) and *Perez v. Ysip*, 81 Phil. 218 (1948) [Per J. Briones, *En Banc*].

[96] RULES OF COURT, Rule 131, Sec. 2 provides:

SEC. 2. *Conclusive presumptions*.— The following are instances of conclusive presumptions:

(a) Whenever 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;

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

[97] RULES OF COURT, Rule 131, Sec. 3 provides:

SEC. 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: . . . .

[98] *Mercado v. Santos and Daza*, 66 Phil. 215, 222 (1938) [Per J. Laurel, *En Banc*], *citing Brant v. Morning Journal Association*, 80 N.Y.S. 1002, 1004; 81 App. Div. 183 and *Joslyn v. Puloer*, 59 Hun. 129, 140; 13 N.Y.S. 311.

SEC. 2. *Conclusive presumptions*.— The following are instances of conclusive presumptions:

(a)Whenever 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;

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

On the other hand, disputable presumptions are presumptions that may be overcome by contrary evidence.[99] They are disputable in recognition of the variability of human behavior. Presumptions are not always true. They may be wrong under certain circumstances, and courts are expected to apply them, keeping in mind the nuances of every experience that may render the expectations wrong.

Thus, the application of disputable presumptions on a given circumstance must be based on the existence of certain facts on which they are meant to operate. "[P]resumptions are not allegations, nor do they supply their absence[.]"[100] Presumptions are conclusions. They do not apply when there are no facts or allegations to support them.

If the facts exist to set in motion the operation of a disputable presumption, courts may accept the presumption. However, contrary evidence may be presented to rebut the presumption.

Courts cannot disregard contrary evidence offered to rebut disputable presumptions. Disputable presumptions apply only in the absence of contrary evidence or explanations. This court explained in *Philippine Agila Satellite Inc. v. Usec. Trinidad-Lichauco*:[101]

---

[99] RULES OF COURT, Rule 131, Sec. 3.

[100] *De Leon v. Villanueva*, 51 Phil. 676, 683 (1928) [Per *J*. Romualdez, *En Banc*].

[101] 522 Phil. 565 (2006) [Per *J*. Tinga, Third Division].

We do not doubt the existence of the presumptions of "good faith" or "regular performance of official duty," yet *these presumptions are disputable and may be contradicted and overcome by other evidence*. Many civil actions are oriented towards overcoming any number of these presumptions, and a cause of action can certainly be geared towards such effect. *The very purpose of trial is to allow a party to present evidence to overcome the disputable presumptions involved. Otherwise, if trial is deemed irrelevant or unnecessary, owing to the perceived indisputability of the presumptions, the judicial exercise would be relegated to a mere ascertainment of what presumptions apply in a given case, nothing more*. Consequently, the entire Rules of Court is rendered as excess verbiage, save perhaps for the provisions laying down the legal presumptions.

If this reasoning of the Court of Appeals were ever adopted as a jurisprudential rule, no public officer could ever be sued for acts executed beyond their official functions or authority, or for tortious conduct or behavior, since such acts would "enjoy the presumption of good faith and in the regular performance of official duty." Indeed, few civil actions of any nature would ever reach the trial stage, if a case can be adjudicated by a mere determination from the complaint or answer as to which legal presumptions are applicable. For example, the presumption that a person is innocent of a wrong is a disputable presumption on the same level as that of the regular performance of official duty. A civil complaint for damages necessarily alleges that the defendant committed a wrongful act or omission that would serve as basis for the award of damages. With the rationale of the Court of Appeals, such complaint can be dismissed upon a motion to dismiss solely on the ground that the presumption is that a person is innocent of a wrong.[102] (Emphasis supplied, citations omitted)

In this case, the presumption that the execution of mortgage contracts was within petitioner's corporate powers does not apply. Securing third-party loans is not connected to petitioner's purposes as an educational institution.

III

Respondent argues that petitioner's act of mortgaging its properties to guarantee FISLAI's loans was consistent with petitioner's business interests, since petitioner was presumably

---

[102] *Id*. at 584-585.

a FISLAI shareholder whose officers and shareholders interlock with FISLAI. Respondent points out that petitioner and its key officers held substantial shares in MSLAI when DSLAI and FISLAI merged. Therefore, it was safe to assume that when the mortgages were executed in 1982, petitioner held substantial shares in FISLAI.[103]

Parties dealing with corporations cannot simply assume that their transaction is within the corporate powers. The acts of a corporation are still limited by its powers and purposes as provided in the law and its articles of incorporation.

Acquiring shares in another corporation is not a means to create new powers for the acquiring corporation. Being a shareholder of another corporation does not automatically change the nature and purpose of a corporation's business. Appropriate amendments must be made either to the law or the articles of incorporation before a corporation can validly exercise powers outside those provided in law or the articles of incorporation. In other words, without an amendment, what is ultra vires before a corporation acquires shares in other corporations is still ultra vires after such acquisition.

Thus, regardless of the number of shares that petitioner had with FISLAI, DSLAI, or MSLAI, securing loans of third persons is still beyond petitioner's power to do. It is still inconsistent with its purposes under the law[104] and its articles of incorporation.[105]

In attempting to show petitioner's interest in securing FISLAI's loans by adverting to their interlocking directors and shareholders, respondent disregards petitioner's separate personality from its officers, shareholders, and other juridical persons.

The separate personality of corporations means that they are "vest[ed] [with] rights, powers, and attributes [of their own] as

---

[103] *Rollo*, pp. 272-273, Bangko Sentral ng Pilipinas' Comment on Petition for Review.

[104] CORP. CODE, Sec. 36.

[105] *Rollo*, p. 81, University of Mindanao's Petition.

if they were natural persons[.]"[106] Their assets and liabilities are their own and not their officers', shareholders', or another corporation's. In the same vein, the assets and liabilities of their officers and shareholders are not the corporations'. Obligations incurred by corporations are not obligations of their officers and shareholders. Obligations of officers and shareholders are not obligations of corporations.[107] In other words, corporate interests are separate from the personal interests of the natural persons that comprise corporations.

Corporations are given separate personalities to allow natural persons to balance the risks of business as they accumulate capital. They are, however, given limited competence as a means to protect the public from fraudulent acts that may be committed using the separate juridical personality given to corporations.

Petitioner's key officers, as shareholders of FISLAI, may have an interest in ensuring the viability of FISLAI by obtaining a loan from respondent and securing it by whatever means. However, having interlocking officers and stockholders with FISLAI does not mean that petitioner, as an educational institution, is or must necessarily be interested in the affairs of FISLAI.

Since petitioner is an entity distinct and separate not only from its own officers and shareholders but also from FISLAI, its interests as an educational institution may not be consistent with FISLAI's.

Petitioner and FISLAI have different constituencies. Petitioner's constituents comprise persons who have committed to developing skills and acquiring knowledge in their chosen fields by availing the formal instruction provided by petitioner. On the other hand, FISLAI is a thrift bank, which constituencies comprise investors.

---

[106] *Lanuza, Jr. v. BF Corporation*, G.R. No. 174938, October 1, 2014, 737 SCRA 275, 296 [Per *J.* Leonen, Second Division].

[107] *Id*. at 295-296.

While petitioner and FISLAI exist ultimately to benefit their stockholders, their constituencies affect the means by which they can maintain their existence. Their interests are congruent with sustaining their constituents' needs because their existence depends on that. Petitioner can exist only if it continues to provide for the kind and quality of instruction that is needed by its constituents. Its operations and existence are placed at risk when resources are used on activities that are not geared toward the attainment of its purpose. Petitioner has no business in securing FISLAI, DSLAI, or MSLAI's loans. This activity is not compatible with its business of providing quality instruction to its constituents.

Indeed, there are instances when we disregard the separate corporate personalities of the corporation and its stockholders, directors, or officers. This is called piercing of the corporate veil.

Corporate veil is pierced when the separate personality of the corporation is being used to perpetrate fraud, illegalities, and injustices.[108] In *Lanuza, Jr. v. BF Corporation*:[109]

> Piercing the corporate veil is warranted when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues." It is also warranted in alter ego cases "where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation."[110]

---

[108] *Id*. at 299.

[109] G.R. No. 174938, October 1, 2014, 737 SCRA 275 [Per *J*. Leonen, Second Division].

[110] *Id*. at 299, *citing Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. No. 166282, February 13, 2013, 690 SCRA 519, 526 [Per *J*. Mendoza, Third Division] and *Pantranco Employees Association (PEA-PTGWO), et al. v. National Labor Relations Commission, et al.*, 600 Phil. 645, 663 (2009) [Per *J*. Nachura, Third Division].

These instances have not been shown in this case. There is no evidence pointing to the possibility that petitioner used its separate personality to defraud third persons or commit illegal acts. Neither is there evidence to show that petitioner was merely a farce of a corporation. What has been shown instead was that petitioner, too, had been victimized by fraudulent and unauthorized acts of its own officers and directors.

In this case, instead of guarding against fraud, we perpetuate fraud if we accept respondent's contentions.

IV

Petitioner argues that it did not authorize Saturnino Petalcorin to mortgage its properties on its behalf. There was no board resolution to that effect. Thus, the mortgages executed by Saturnino Petalcorin were unenforceable.[111]

The mortgage contracts executed in favor of respondent do not bind petitioner. They were executed without authority from petitioner.

Petitioner must exercise its powers and conduct its business through its Board of Trustees. Section 23 of the Corporation Code provides:

> SEC. 23. *The board of directors or trustees.*—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Being a juridical person, petitioner cannot conduct its business, make decisions, or act in any manner without action from its Board of Trustees. The Board of Trustees must act as a body in order to exercise corporate powers. Individual trustees are not clothed with corporate powers just by being a trustee. Hence,

---

[111] *Rollo*, p. 88, University of Mindanao, Inc.'s Petition.

the individual trustee cannot bind the corporation by himself or herself.

The corporation may, however, delegate through a board resolution its corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation.[112]

The relationship between a corporation and its representatives is governed by the general principles of agency.[113] Article 1317 of the Civil Code provides that there must be authority from the principal before anyone can act in his or her name:

> ART. 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.

Hence, without delegation by the board of directors or trustees, acts of a person—including those of the corporation's directors, trustees, shareholders, or officers—executed on behalf of the corporation are generally not binding on the corporation.[114]

Contracts entered into in another's name without authority or valid legal representation are generally unenforceable. The Civil Code provides:

---

[112] CORP. CODE, Sec. 45 provides:

> SEC. 45. *Ultra vires acts of corporations.*—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

*See also AF Realty & Development, Inc. v. Dieselman Freight Services, Co.*, 424 Phil. 446, 454 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[113] *See Yasuma v. Heirs of Cecilio S. de Villa*, 531 Phil. 62, 68 (2006) [Per J. Corona, Second Division], *citing San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, 357 Phil. 631, 644 (1998) [Per J. Panganiban, First Division].

[114] *Premium Marble Resources, Inc. v. Court of Appeals*, 332 Phil. 10, 18 (1996) [Per J. Torres, Jr., Second Division]; *See also People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 862 (1998) [Per J. Panganiban, First Division].

ART. 1317. . . .

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.

. . . .

ART. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers[.]

The unenforceable status of contracts entered into by an unauthorized person on behalf of another is based on the basic principle that contracts must be consented to by both parties.[115] There is no contract without meeting of the minds as to the subject matter and cause of the obligations created under the contract.[116]

Consent of a person cannot be presumed from representations of another, especially if obligations will be incurred as a result.

---

[115] CIVIL CODE, Art. 1318 provides:

ART. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

[116] CIVIL CODE, Arts. 1305 and 1318 provide:

ART. 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

. . . .

ART. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

Thus, authority is required to make actions made on his or her behalf binding on a person. Contracts entered into by persons without authority from the corporation shall generally be considered ultra vires and unenforceable[117] against the corporation.

Two trial courts[118] found that the Secretary's Certificate and the board resolution were either non-existent or fictitious. The trial courts based their findings on the testimony of the Corporate Secretary, Aurora de Leon herself. She signed the Secretary's Certificate and the excerpt of the minutes of the alleged board meeting purporting to authorize Saturnino Petalcorin to mortgage petitioner's properties. There was no board meeting to that effect. Guillermo B. Torres ordered the issuance of the Secretary's Certificate. Aurora de Leon's testimony was corroborated by Saturnino Petalcorin.

Even the Court of Appeals, which reversed the trial courts' decisions, recognized that "BSP failed to prove that the UM Board of Trustees actually passed a Board Resolution authorizing Petalcorin to mortgage the subject real properties[.]"[119]

---

[117] CIVIL CODE, Arts. 1403(1), 1404, and 1317 provide:

ART. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

. . . .

ART. 1404. Unauthorized contracts are governed by article 1317 and the principles of agency in Title X of this Book.

. . . .

ART. 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.

[118] Two Complaints were filed before two separate trial courts: Iligan City Regional Trial Court and Cagayan de Oro City Regional Trial Court.

[119] *Rollo*, p. 32, Court of Appeals Decision.

Well-entrenched is the rule that this court, not being a trier of facts, is bound by the findings of fact of the trial courts and the Court of Appeals when such findings are supported by evidence on record.[120] Hence, not having the proper board resolution to authorize Saturnino Petalcorin to execute the mortgage contracts for petitioner, the contracts he executed are unenforceable against petitioner. They cannot bind petitioner.

However, personal liabilities may be incurred by directors who assented to such unauthorized act[121] and by the person who contracted in excess of the limits of his or her authority without the corporation's knowledge.[122]

V

Unauthorized acts that are merely beyond the powers of the corporation under its articles of incorporation are not void ab initio.

In *Pirovano, et al.*, this court explained that corporate acts may be ultra vires but not void.[123] Corporate acts may be capable of ratification:[124]

---

[120] *See Ramos, Sr. v. Gatchalian Realty, Inc.*, 238 Phil. 689, 698 (1987) [Per *J.* Gutierrez, Jr., Third Division].

[121] CORP. CODE, Sec. 31 provides:

SEC. 31. *Liability of directors, trustees or officers.*—Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation . . . shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons [.]

[122] CIVIL CODE, Art.1897 provides:

ART. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

[123] *Pirovano, et al. v. De la Rama Steamship Co.*, 96 Phil. 335, 360 (1954) [Per *J.* Bautista Angelo, *En Banc*].

[124] *Id.*

[A] distinction should be made between corporate acts or contracts which are illegal and those which are merely ultra vires. The former contemplates the doing of an act which is contrary to law, morals, or public order, or contravene some rules of public policy or public duty, and are, like similar transactions between individuals, void. They cannot serve as basis of a court action, nor acquire validity by performance, ratification, or estoppel. Mere ultra vires acts, on the other hand, or those which are not illegal and void ab initio, but are not merely within the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders.[125]

Thus, even though a person did not give another person authority to act on his or her behalf, the action may be enforced against him or her if it is shown that he or she ratified it or allowed the other person to act as if he or she had full authority to do so. The Civil Code provides:

ART. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

*As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.*

ART. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent *if the former allowed the latter to act as though he had full powers*. (Emphasis supplied)

Ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act.[126] It converts the unauthorized act of an agent into an act of the principal.[127] It cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract

---

[125] *Id*.

[126] *See Yasuma v. Heirs of Cecilio S. de Villa*, 531 Phil. 62, 68 (2006) [Per *J*. Corona, Second Division] and *Lim v. Court of Appeals, Mindanao Station*, G.R. No. 192615, January 30, 2013, 689 SCRA 705, 711-712 [Per *J*. Brion, Second Division].

[127] *Yasuma v. Heirs of Cecilio S. de Villa*, 531 Phil. 62, 68 (2006) [Per *J.* Corona, Second Division].

valid and enforceable.[128] It is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act.[129] Ratification has the effect of placing the principal in a position as if he or she signed the original contract. In *Board of Liquidators v. Heirs of M. Kalaw, et al.*:[130]

> Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." The language of one case is expressive: "The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract. The theory of corporate ratification is predicated on the right of a corporation to contract, and any ratification or adoption is equivalent to a grant of prior authority."[131] (Citations omitted)

Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention

---

[128] CIVIL CODE, Art. 1396 provides:

ART. 1396. Ratification cleanses the contract from all its defects from the moment it was constituted.

*Pirovano, et al. v. De la Rama Steamship Co.*, 96 Phil. 335, 362 (1954) [Per *J*. Bautista Angelo, *En Banc*].

[129] CIVIL CODE, Arts. 1392 and 1393 provide:

ART. 1392. Ratification extinguishes the action to annul a voidable contract.

ART. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

*See Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*, 479 Phil. 896, 910-911 (2004) [Per *J*. Callejo, Sr., Second Division].

[130] 127 Phil. 399 (1967) [Per *J*. Sanchez, *En Banc*].

[131] *Id*. at 420; *See also De Jesus v. Daza*, 77 Phil. 152, 160 (1946) [Per *J*. Hilado, *En Banc*].

of benefits.[132] However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own.[133] "[It] cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent."[134]

No act by petitioner can be interpreted as anything close to ratification. It was not shown that it issued a resolution ratifying the execution of the mortgage contracts. It was not shown that it received proceeds of the loans secured by the mortgage contracts. There was also no showing that it received any consideration for the execution of the mortgage contracts. It even appears that petitioner was unaware of the mortgage contracts until respondent notified it of its desire to foreclose the mortgaged properties.

Ratification must be knowingly and voluntarily done.[135] Petitioner's lack of knowledge about the mortgage executed in its name precludes an interpretation that there was any ratification on its part.

Respondent further argues that petitioner is presumed to have knowledge of its transactions with respondent because its officers, the Spouses Guillermo and Dolores Torres, participated in obtaining the loan.[136]

---

[132] *Yasuma v. Heirs of Cecilio S. de Villa*, 531 Phil. 62, 68 (2006) [Per *J.* Corona, Second Division].

[133] *See also Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*, 479 Phil. 896, 915 (2004) [Per *J.* Callejo, Sr., Second Division].

[134] *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*, 479 Phil. 896, 915 (2004) [Per *J.* Callejo, Sr., Second Division].

[135] *Yasuma v. Heirs of Cecilio S. de Villa*, 531 Phil. 62, 68 (2006) [Per *J.* Corona, Second Division].

[136] *Rollo*, p. 284, Bangko Sentral ng Pilipinas' Comment on Petition for Review.

Indeed, a corporation, being a person created by mere fiction of law, can act only through natural persons such as its directors, officers, agents, and representatives. Hence, the general rule is that knowledge of an officer is considered knowledge of the corporation.

However, even though the Spouses Guillermo and Dolores Torres were officers of both the thrift banks and petitioner, their knowledge of the mortgage contracts cannot be considered as knowledge of the corporation.

The rule that knowledge of an officer is considered knowledge of the corporation applies only when the officer is acting within the authority given to him or her by the corporation. In *Francisco v. Government Service Insurance System*:[137]

> Knowledge of facts acquired or possessed by an officer or agent of a corporation in the course of his employment, and in relation to matters within the scope of his authority, is notice to the corporation, whether he communicates such knowledge or not.[138]

The public should be able to rely on and be protected from the representations of a corporate representative acting within the scope of his or her authority. This is why an authorized officer's knowledge is considered knowledge of corporation. However, just as the public should be able to rely on and be protected from corporate representations, corporations should also be able to expect that they will not be bound by unauthorized actions made on their account.

Thus, knowledge should be actually communicated to the corporation through its authorized representatives. A corporation cannot be expected to act or not act on a knowledge that had not been communicated to it through an authorized representative. There can be no implied ratification without actual communication. Knowledge of the existence of contract must be brought to the corporation's representative who has authority

---

[137] 117 Phil. 586 (1963) [Per *J.* J. B. L. Reyes, *En Banc*].

[138] *Id*. at 595, *quoting* BALLENTINE, *LAW ON CORPORATIONS*, Sec. 112.

to ratify it. Further, "the circumstances must be shown from which such knowledge may be presumed."[139]

The Spouses Guillermo and Dolores Torres' knowledge cannot be interpreted as knowledge of petitioner. Their knowledge was not obtained as petitioner's representatives. It was not shown that they were acting for and within the authority given by petitioner when they acquired knowledge of the loan transactions and the mortgages. The knowledge was obtained in the interest of and as representatives of the thrift banks.

VI

Respondent argues that Saturnino Petalcorin was clothed with the authority to transact on behalf of petitioner, based on the board resolution dated March 30, 1982 and Aurora de Leon's notarized Secretary's Certificate.[140] According to respondent, petitioner is bound by the mortgage contracts executed by Saturnino Petalcorin.[141]

This court has recognized presumed or apparent authority or capacity to bind corporate representatives in instances when the corporation, through its silence or other acts of recognition, allowed others to believe that persons, through their usual exercise of corporate powers, were conferred with authority to deal on the corporation's behalf.[142]

The doctrine of apparent authority does not go into the question of the corporation's competence or power to do a particular act. It involves the question of whether the officer has the power

---

[139] *Yu Chuck v. "Kong Li Po",* 46 Phil. 608, 615 (1924) [Per *J.* Ostrand, *En Banc*].

[140] *Rollo*, pp. 34, Court of Appeals Decision, and 280, Bangko Sentral ng Pilipinas' Comment on Petition for Review.

[141] *Id*. at 277-278, Bangko Sentral ng Pilipinas' Comment on Petition for Review.

[142] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 865 (1998) [Per *J.* Panganiban, First Division]; *Yao Ka Sin Trading v. Court of Appeals*, G.R. No. 53820, June 15, 1992, 209 SCRA 763, 781-782 [Per *J.* Davide, Jr., Third Division].

or is clothed with the appearance of having the power to act for the corporation. A finding that there is apparent authority is not the same as a finding that the corporate act in question is within the corporation's limited powers.

The rule on apparent authority is based on the principle of estoppel. The Civil Code provides:

> ART. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.
>
> . . . .
>
> ART. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.
>
> Agency may be oral, unless the law requires a specific form.

A corporation is estopped by its silence and acts of recognition because we recognize that there is information asymmetry between third persons who have little to no information as to what happens during corporate meetings, and the corporate officers, directors, and representatives who are insiders to corporate affairs.[143]

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,[144] this court held that the contract entered into by the corporation's officer without a board resolution was binding upon the corporation because it previously allowed the officer to contract on its behalf despite the lack of board resolution.[145]

In *Francisco*, this court ruled that Francisco's proposal for redemption of property was accepted by and binding upon the Government Service Insurance System. This court did not

---

[143] *See Associated Bank v. Spouses Pronstroller*, 580 Phil. 104, 119-120 (2008) [Per *J.* Nachura, Third Division].

[144] 357 Phil. 850 (1998) [Per *J.* Panganiban, First Division].

[145] *Id.* at 864.

appreciate the Government Service Insurance System's defense that since it was the Board Secretary and not the General Manager who sent Francisco the acceptance telegram, it could not be made binding upon the Government Service Insurance System. It did not authorize the Board Secretary to sign for the General Manager. This court appreciated the Government Service Insurance System's failure to disown the telegram sent by the Board Secretary and its silence while it accepted all payments made by Francisco for the redemption of property.[146]

There can be no apparent authority and the corporation cannot be estopped from denying the binding affect of an act when there is no evidence pointing to similar acts and other circumstances that can be interpreted as the corporation holding out a representative as having authority to contract on its behalf. In *Advance Paper Corporation v. Arma Traders Corporation*,[147] this court had the occasion to say:

> The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.[148] (Citation omitted)

Saturnino Petalcorin's authority to transact on behalf of petitioner cannot be presumed based on a Secretary's Certificate and excerpt from the minutes of the alleged board meeting that were found to have been simulated. These documents cannot be considered as the corporate acts that held out Saturnino Petalcorin as petitioner's authorized representative for mortgage transactions. They were not supported by an actual board meeting.[149]

---

[146] *Francisco v. Government Service Insurance System*, 117 Phil. 586, 592-595 (1963) [Per *J.* J. B. L. Reyes, *En Banc*].

[147] G.R. No. 176897, December 11, 2013, 712 SCRA 313 [Per *J.* Brion, Second Division].

[148] *Id*. at 330.

[149] *Rollo*, p. 24, Court of Appeals Decision.

VII

Respondent argues that it may rely on the Secretary's Certificate issued by Aurora de Leon because it was notarized.

The Secretary's Certificate was void whether or not it was notarized.

Notarization creates a presumption of regularity and authenticity on the document. This presumption may be rebutted by "strong, complete and conclusive proof"[150] to the contrary. While notarial acknowledgment "attaches full faith and credit to the document concerned[,]"[151] it does not give the document its validity or binding effect. When there is evidence showing that the document is invalid, the presumption of regularity or authenticity is not applicable.

In *Basilio v. Court of Appeals*,[152] this court was convinced that the purported signatory on a deed of sale was not as represented, despite testimony from the notary public that the signatory appeared before him and signed the instrument.[153] Apart from finding that there was forgery,[154] this court noted:

> The notary public, Atty. Ruben Silvestre, testified that he was the one who notarized the document and that Dionisio Z. Basilio appeared personally before him and signed the instrument himself. However, he admitted that he did not know Dionisio Z. Basilio personally to ascertain if the person who signed the document was actually Dionisio Z. Basilio himself, or another person who stood in his place. He could not even recall whether the document had been executed in his office or not.

Thus, considering the testimonies of various witnesses and a comparison of the signature in question with admittedly genuine

---

[150] *Sales v. Court of Appeals*, G.R. No. L-40145, July 29, 1992, 211 SCRA 858, 865 [Per *J*. Romero, Third Division].

[151] *Id*.

[152] 400 Phil. 120 (2000) [Per *J*. Pardo, First Division].

[153] *Id*. at 125-126.

[154] *Id*. at 125.

signatures, the Court is convinced that Dionisio Z. Basilio did not execute the questioned deed of sale. *Although the questioned deed of sale was a public document having in its favor the presumption of regularity, such presumption was adequately refuted by competent witnesses showing its forgery and the Court's own visual analysis of the document*.[155] (Emphasis supplied, citations omitted)

In *Suntay v. Court of Appeals*,[156] this court held that a notarized deed of sale was void because it was a mere sham.[157] It was not intended to have any effect between the parties.[158] This court said:

> [I]t is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto.[159]

Since the notarized Secretary's Certificate was found to have been issued without a supporting board resolution, it produced no effect. It is not binding upon petitioner. It should not have been relied on by respondent especially given its status as a bank.

VIII

The banking institution is "impressed with public interest"[160] such that the public's faith is "of paramount importance."[161] Thus, banks are required to exercise the highest degree of diligence in their transactions.[162] In *China Banking Corporation v. Lagon*,[163] this court found that the bank was not a mortgagee

---

[155] *Id*. at 126.

[156] 321 Phil. 809 (1995) [Per *J*. Hermosisima, Jr., First Division].

[157] *Id*. at 835-836.

[158] *Id*. at 834.

[159] *Id*.

[160] *See Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361, 388 (2001) [Per *J*. Quisumbing, Second Division].

[161] *Id*.

[162] *Id*.

[163] 527 Phil. 143 (2006) [Per *J*. Quisumbing, Third Division].

in good faith for its failure to question the due execution of a Special Power of Attorney that was presented to it in relation to a mortgage contract.[164] This court said:

> Though petitioner is not expected to conduct an exhaustive investigation on the history of the mortgagor's title, it cannot be excused from the duty of exercising the due diligence required of a banking institution. Banks are expected to exercise more care and prudence than private individuals in their dealings, even those that involve registered lands, for their business is affected with public interest.[165] (Citations omitted)

For its failure to exercise the degree of diligence required of banks, respondent cannot claim good faith in the execution of the mortgage contracts with Saturnino Petalcorin. Respondent's witness, Daciano Paguio, Jr., testified that there was no board resolution authorizing Saturnino Petalcorin to act on behalf of petitioner.[166] Respondent did not inquire further as to Saturnino Petalcorin's authority.

Banks cannot rely on assumptions. This will be contrary to the high standard of diligence required of them.

VI

According to respondent, the annotations of respondent's mortgage interests on the certificates of titles of petitioner's properties operated as constructive notice to petitioner of the existence of such interests.[167] Hence, petitioners are now estopped from claiming that they did not know about the mortgage.

Annotations of adverse claims on certificates of title to properties operate as constructive notice only to third parties—not to the court or the registered owner. In *Sajonas v. Court of Appeals*:[168]

---

[164] *Id*. at 152-153.

[165] *Id*. at 153.

[166] *Rollo*, p. 28, Court of Appeals Decision.

[167] *Id*. at 285-286.

[168] 327 Phil. 689 (1996) [Per *J*. Torres, Jr., Second Division].

[A]nnotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act or Act 496 (now [Presidential Decree No.] 1529 or the Property Registration Decree), and serves a *warning to third parties dealing with said property* that someone is claiming an interest on the same or a *better right than that of the registered owner thereof.*[169] (Emphasis supplied)

Annotations are merely claims of interest or claims of the legal nature and incidents of relationship between the person whose name appears on the document and the person who caused the annotation. It does not say anything about the validity of the claim or convert a defective claim or document into a valid one.[170] These claims may be proved or disproved during trial.

Thus, annotations are not conclusive upon courts or upon owners who may not have reason to doubt the security of their claim as their properties' title holders.

**WHEREFORE**, the Petition is **GRANTED**. The Court of Appeals' Decision dated December 17, 2009 is **REVERSED** and **SET ASIDE**. The Regional Trial Courts' Decisions of November 23, 2001 and December 7, 2001 are **REINSTATED**.

**SO ORDERED.**

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

---

[169] *Id*. at 701-702.

[170] *See Cuaño v. Court of Appeals*, G.R. No. 107159, September 26, 1994, 237 SCRA 122, 136-137 [Per *J*. Feliciano, Third Division].

**THIRD DIVISION**

[G.R. No.197825. January 11, 2016]

**CAMILO SIBAL,** *petitioner, vs.* **PEDRO BUQUEL, SANTIAGO BUQUEL, JR., ROSALINDA BUQUEL, represented by FRANCISCO BUQUEL,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; PETITION FOR ANNULMENT OF JUDGMENT; A PETITION FOR ANNULMENT OF JUDGMENT IS A REMEDY IN EQUITY SO EXCEPTIONAL IN NATURE THAT IT MAY BE AVAILED OF ONLY IF THE JUDGMENT, FINAL ORDER, OR FINAL RESOLUTION SOUGHT TO BE ANNULLED WAS RENDERED BY A COURT LACKING JURISDICTION OR THROUGH EXTRINSIC FRAUD, AND ONLY WHEN OTHER REMEDIES ARE WANTING; ELUCIDATED.—** A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only if the judgment, final order, or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud, and only when other remedies are wanting. x x x Moreover, parties aggrieved by final judgments, orders or resolutions cannot be allowed to easily and readily abuse a petition for annulment of judgment. Thus, the Court has instituted safeguards by limiting the grounds for annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available without fault on the part of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper. Further, it must be emphasized that not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. According to *Cosmic Lumber Corporation v. Court of Appeals*, fraud is extrinsic when the unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a

compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing. As a ground for annulment of judgment, extrinsic fraud must arise from an act of the adverse party, and the fraud must be of such nature as to have deprived the petitioner of its day in court. The fraud is not extrinsic if the act was committed by the petitioner's own counsel. x x x What is certain, for purposes of application of Rule 47, is that mistake and gross negligence cannot be equated to the extrinsic fraud under Rule 47. By its very nature, extrinsic fraud relates to a cause that is collateral in character, *i.e.,* it relates to any fraudulent act of the prevailing party in litigation which is committed outside of the trial of the case, where the defeated party has been prevented from presenting fully his side of the cause, by fraud or deception practiced on him by his opponent. And even in the presence of fraud, annulment will not lie unless the fraud is committed by the adverse party, not by one's own lawyer. In the latter case, the remedy of the client is to proceed against his own lawyer and not to re-litigate the case where judgment had been rendered.

**APPEARANCES OF COUNSEL**

*Melchor A Battung* for petitioner.
*Carmelo O. Villacete* for respondents.

## D E C I S I O N

**PERALTA, *J.*:**

Before the Court is a Petition for Review under Rule 45 of the Rules of Court which petitioner Camilo Sibal filed, assailing the Decision[1] of the Court of Appeals *(CA),* dated March 16,

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Elihu A. Ybañez; concurring; *rollo,* pp. 84-97.

2011, and its Resolution[2] dated July 7, 2011 in CA-G.R. SP NO. 104774. The CA affirmed the Decision[3] of the Regional Trial Court *(RTC)* of Tuguegarao City, Cagayan, Branch 02, dated January 5, 2007, in Civil Case No. 6429.

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

Respondents Pedro Buquel, Santiago Buquel, Jr., Rosalinda Buquel and Francisco Buquel inherited from their parents, Santiago Buquel, Sr. and Faustina Buquel, a parcel of land consisting of 81,022 sq.m. covered by Original Cetiificate of Title No. 0-725. Sometime in January 1999, petitioner Camilo Sibal and Tobi Mangoba took possession of a portion of the property which belonged to Santiago, Sr. Thereafter, the Buquels made several demands against Sibal and Mangoba for them to vacate and turn over the property, but the latter refused to do so. Hence, they filed a complaint before the Tuguegarao RTC for recovery of possession and damages.

On January 5, 2007, the Tuguegarao RTC ruled in favor of the Buquels, the decretal portion of the Decision provides:

> WHEREFQRE, in the light of the foregoing, the Court hereby renders judgment in favor of the Plaintiffs Pedro Buquel, Santiago Buquel, Jr., Rosalinda Buquel, and Francisco Buquel as against Defendants Camilo Sibal and Tobi Mangoba ordering:
>
> 1. The restoration to Plaintiffs of their peaceful possession of the land in question, specifically on the share of Santiago Buquel Jr.;
>
> 2. The Defendants to pay the plaintiffs the amount of Ten Thousand Pesos for Attorney's Fees; and
>
> 3. The Defendants to pay to the Plaintiffs the amount of Fifteen Thousand Pesos as moral and actual damages.
>
> SO ORDERED.[4]

---

[2] *Id.* at 109.

[3] Penned by Judge Vilma T. Pauig; *id.* at 38-40.

[4] *Rollo,* p. 24.

Thereafter, said RTC Decision became final and executory; hence, the trial court issued a writ of execution.

On August 8, 2008, Sibal filed a Petition for Annulment of the RTC Decision before the CA, where he raised lack of jurisdiction and extrinsic fraud as grounds. On March 16, 2011, the CA dismissed Sibal's petition, thus:

> **WHEREFORE,** premises considered, the instant petition is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[5]

Sibal filed a Motion for Reconsideration, but the same was denied. Thus, he filed the instant petition.

Sibal maintains that the RTC did not acquire jurisdiction over the case and that the Buquels were guilty of extrinsic fraud.

The petition is devoid of merit.

Sibal contends that the RTC Decision should be annulled on the ground that the RTC never acquired jurisdiction over the case as the complaint filed merely alleged that the value of the subject property is ₱51,190.00, without, however, categorically mentioning its assessed value, and only the real property tax order of payment was attached to the complaint and not the tax declaration that would determine the assessed value of the property. But, upon review of the records, the Court notes that the Real Property Tax Order of Payment No. 091-05713-03 dated November 24, 2002, or "Exhibit C," shows that the amount of ₱51,190.00 is truly the assessed value of the property, which fact Sibal failed to refute.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only if the judgment, final order, or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud, and only when other remedies are wanting.[6] In the present

---

[5] *Id.* at 97. (Emphasis on the original)

[6] *Pinausukan Seafood House Roxas Boulevard, Inc. v. FEBTC, now BPI,* G.R. No. 159926, January 20, 2014, 714 SCRA 226, 240.

case, Sibal was able to avail of other remedies when he filed before the RTC a motion to quash the writ of execution and a motion to annul judgment.

Moreover, parties aggrieved by final judgments, orders or resolutions cannot be allowed to easily and readily abuse a petition for annulment of judgment. Thus, the Court has instituted safeguards by limiting the grounds for annulment to lack of jurisdiction and extrinsic. fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available without fault on the part of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.[7]

Further, it must be emphasized that not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. According to *Cosmic Lumber Corporation v. Court of Appeals,*[8] fraud is extrinsic when the unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.

As a ground for annulment of judgment, extrinsic fraud must arise from an act of the adverse party, and the fraud must be of such nature as to have deprived the petitioner of its day in court. The fraud is not extrinsic if the act was committed by the petitioner's own counse1.[9]

---

[7] *Id.*

[8] 332 Phil. 948, 961-962 (1996).

[9] *Pinausukan Seafood House v. FEBTC, supra* note 6, at 249.

The case at bar is closely similar to, if not the same with the case of *Pinausukan Seafood House v. FEBTC.*[10] In this case, the Court noticed that the petition's own language mentioned mistake and gross negligence on the part of petitioner's own counsel. The petition even suggested that the negligence of its counsel may constitute professional misconduct. The Court then ruled that such neglect of counsel, even if it were true, was not tantamount to extrinsic fraud because it did not emanate from any act of FEBTC as the prevailing party, and did not occur outside the trial of the case. What is certain, for purposes of application of Rule 47, is that mistake and gross negligence cannot be equated to the extrinsic fraud under Rule 47. By its very nature, extrinsic fraud relates to a cause that is collateral in character, *i.e.,* it relates to any fraudulent act of the prevailing party in litigation which is committed outside of the trial of the case, where the defeated party has been prevented from presenting fully his side of the cause, by fraud or deception practiced on him by his opponent. And even in the presence of fraud, annulment will not lie unless the fraud is committed by the adverse party, not by one's own lawyer. In the latter case, the remedy of the client is to proceed against his own lawyer and not to re-litigate the case where judgment had been rendered.

Sibal asserts that the negligence of his former counsel in handling his defense during the proceedings in Civil Case No. 6429 resulted in violation of his right to due process. He claims that his counsel's inexcusable negligence denied him of his day in court. However, he admitted that he attended only one stage of the proceedings below, which was the preliminary conference. He was not aware of the subsequent proceedings as he was totally dependent on his former counsel and would merely wait for the latter to notify him if his attendance would be required. There was likewise no indication that his counsel was in fact in cahoots with the Buquels to obtain the assailed judgment. Sibal must therefore bear the unfortunate consequences of his actions. As a litigant, he should not have entirely left the case in his counsel's hands, for he had the continuing duty to keep

---

[10] *Supra* note *6.*

himself abreast of the developments, if only to protect his own interest in the litigation. He could have discharged said duty by keeping in regular touch with his counsel, but he failed to do so.[11]

**WHEREFORE,** the petition is **DENIED.** The Decision of the Court of Appeals dated March 16, 2011 and its Resolution dated July 7, 2011 in CA-G.R. SP No. 104774 are hereby **AFFIRMED.**

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 198450. January 11, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **FERNANDO RANCHE HAVANA a.k.a. FERNANDO RANCHE ABANA,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; BUY-BUST OPERATION; COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) IS NOT AN INDISPENSABLE REQUIREMENT BEFORE POLICE AUTHORITIES MAY CARRY OUT A BUY-BUST OPERATION.—** We held in *People v. Abedin* that coordination with the PDEA is not an indispensable requirement before police

---

[11] *Id*. at 250.

authorities may carry out a buy-bust operation; that in fact, even the absence of coordination with the PDEA will not invalidate a buy-bust operation. Neither is the presentation of the informant indispensable to the success in prosecuting drug-related cases. Informers are almost always never presented in court because of the need to preserve their invaluable service to the police. Unless their testimony is absolutely essential to the conviction of the accused, their testimony may be dispensed with since their narrations would be merely corroborative to the testimonies of the buy-bust team.

2. **ID.; ID.; ID.; ELEMENTS.—** "In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence." The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence beyond reasonable doubt plus the fact of its delivery and/or sale are both vital and essential to a judgment of conviction in a criminal case. And more than just the fact of sale, "[o]f prime importance therefore x x x is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.

3. **ID.; ID.; ID.; BUY-BUST OPERATION; CHAIN OF CUSTODY; DEFINED.—** "x x x The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed." The Dangerous Drugs Board Regulation No. 1, Series of 2002, defines chain of custody as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."

4. **ID.; ID.; ID.; ID.; ID.; WHILE THE COURT IN CERTAIN CASES HAS TEMPERED THE MANDATE OF STRICT COMPLIANCE WITH THE REQUISITES UNDER SECTION 21 OF RA 9165, SUCH LIBERALITY CAN BE APPLIED ONLY WHEN THE EVIDENTIARY VALUE**

**AND INTEGRITY OF THE ILLEGAL DRUG ARE PROPERLY PRESERVED; NOT ESTABLISHED IN CASE AT BAR.—** "[W]hile the chain of custody should ideally be perfect [and unbroken], in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.'" As such, what is of utmost importance "is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused." In the case at bench, this Court finds it exceedingly difficult to believe that the integrity and evidentiary value of the drug have been properly preserved by the apprehending officers. The inexplicable failure of the police officers to testify as to what they did with the alleged drug while in their respective possession resulted in a breach or break in the chain of custody of the drug. x x x Here, apart from the utter failure of the prosecution to establish an unbroken chain of custody, yet another procedural lapse casts further uncertainty about the identity and integrity of the subject *shabu*. We refer to the non- compliance by the buy-bust team with the most rudimentary procedural safeguards relative to the custody and disposition of the seized item under Section 21(1), Article II of RA 9165. Here, the alleged apprehending team after the alleged initial custody and control of the drug, and after immediately seizing and confiscating the same, never ever made a physical inventory of the same, nor did it ever photograph the same in the presence of the appellant from whom the alleged item was confiscated. There was no physical inventory and photograph of the item allegedly seized from appellant. Neither was there any explanation offered for such failure. While this Court in certain cases has tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165, such liberality, as stated in the Implementing Rules and Regulations can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved as we stressed in *People v. Guru*. In the case at bar, the evidentiary value and integrity of the alleged illegal drug had been thoroughly compromised. Serious uncertainty is generated on the identity of the item in view of the broken linkages in the chain of custody. In this light, the presumption of regularity in the performance of official duty accorded the buy-bust team by the courts below cannot arise.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Daryll Roque A. Amante, Jr.,* for accused-appellant.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

"Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful prosecution of illegal possession or illegal sale of dangerous drugs."[1]

At issue in this case is whether appellant Fernando Ranche Havana a.k.a. Fernando Ranche Abana did in fact sell or deliver to an alleged poseur-buyer some 0.03 gram of the banned substance Methylamphetamine Hydrochloride, locally known as "shabu" on the late afternoon of November 4, 2005. The appellant insists that he never did. The prosecution asserts the contrary.

On appeal is the May 31, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00688, affirming the February 28, 2007 Decision[3] of the Regional Trial Court (RTC) of Cebu City, Branch 58 finding Fernando Havana *y* Ranche a.k.a. Fernando Abana *y* Ranche (appellant) guilty of violating Section 5, Article II of Republic Act No. 9165 (RA 9165) otherwise known as the Comprehensive Dangerous Drugs Act

---

[1] *People v. Relato,* G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262; *People v. Zakaria*, G.R. No. 181042, November 26, 2012, 686 SCRA 390, 391-392.

[2] CA *rollo*, pp. 79-90; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

[3] Records, pp. 73-80; penned by Judge Gabriel T. Ingles (now a member of the Court of Appeals).

of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

***Factual Antecedents***

In an Information[4] dated November 18, 2005, the appellant was charged with illegal sale of dangerous drugs committed as follows:

> That on or about the 4th day of November, 2005, at about 6:30 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur[-]buyer the following:
>
> One (1) heat-sealed transparent plastic packet containing 0.03 gram of white crystalline substance
>
> containing Methylamphetamine Hydrochloride, locally known as "SHABU", a dangerous drug.
>
> CONTRARY TO LAW.[5]

Appellant put in a negative plea. Trial then followed.

The prosecution's case is essentially erected upon the testimonies of PO2 Miguel R. Enriquez[6] (PO2 Enriquez), SPO1 Rogelio J. Cañete, Jr. (SPO1 Cañete), and Police Chief Inspector Mutchit G. Salinas (PCI Salinas), all members of the Philippine National Police (PNP), Police Station 10, Punta Princesa, Cebu City and documentary exhibits pertaining to the buy-bust operation. The combined testimonies and the documentary exhibits tended to establish these facts:

On the afternoon of November 4, 2005, a civilian informant, one "Droga", went to Police Station 10, Punta Princesa, Cebu City and reported to the duty officer SPO1 Vicente R. Espenido, Jr. (SPO1 Espenido) that the appellant was actively engaged in the illegal drug trade at Sitio Mangga, Punta Princesa, Cebu

---

[4] *Id*. at 1.

[5] *Id*.

[6] Also referred as PO3 Enriquez in some parts of the records.

City. SPO1 Espenido immediately assembled a buy-bust team, with him as the team leader, the civilian asset and with PO2 Enriquez, SPO1 Cañete, and SPO1 Jasper C. Nuñez (PO2 Nuñez) as back-up. The police team designated the unnamed "civilian informant" as poseur-buyer and provided him with a ₱100.00 marked money bill, with its serial number (SN003332) noted in the police blotter,[7] to be used for the purpose of buying *shabu* from appellant. The buy-bust operation was allegedly coordinated with the Office of the Philippine Drug Enforcement Agency (PDEA).[8] When the police team reached the target area, the "civilian informant" went to the house of appellant and called the latter. Hidden from view, some 15 meters away from the house, the back-up operatives, PO2 Enriquez and SPO1 Cañete, saw the civilian informant talking with the appellant. Not long after, they saw the "civilian informant" handling over the marked ₱100.00 bill to the appellant, who in exchange gave to the former a plastic pack containing 0.03 gram white crystalline substance which these two suspected as *shabu*. The "civilian informant" then placed a face towel on his left shoulder to signal that the sale had been consummated. SPO1 Espenido and his two companions rushed towards the "civilian informant" and the appellant and arrested the latter after apprising him of his constitutional rights. SPO1 Espenido recovered the ₱100.00 marked money from the appellant while the plastic pack was given by the "civilian informant" to SPO1 Espenido.

The appellant was taken to the police station for investigation. The ₱100.00 marked money and the plastic pack containing the suspected *shabu* were turned over to SPO2 Nuñez who marked the plastic pack with "FA" the initials of herein appellant. He then prepared a letter requesting for examination[9] of the item seized from the appellant addressed to the PNP Crime Laboratory. PCI Salinas, a forensic chemist of the PNP Crime Laboratory of Brgy. Apas, Cebu City, testified that he conducted a laboratory

---

[7] Exhibit "B".

[8] Exhibit "A".

[9] Exhibit "C".

examination of the recovered specimen[10] that yielded "positive result for the presence of methylamphetamine hydrochloride, a dangerous drug."[11]

The appellant denied that he was a *shabu*-seller; he also denied that he was arrested in a buy-bust operation. He claimed that on that evening of November 4, 2005 he was eating bread when SPO2 Nuñez barged inside his house, handcuffed him and brought him to the police precinct. He claimed that he was mistaken for his neighbor "Narding" the real *shabu*-seller. His daughter, Maria Theresa, corroborated him.

***Ruling of the Regional Trial Court***

The RTC found appellant guilty as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

From this judgment, appellant appealed to the CA.

***Ruling of the Court of Appeals***

On appeal, the CA upheld the RTC ruling. The appellate court held that the non-submission of the pre-operation report to the PDEA did not at all render the buy-bust operation irregular. What it held as important is that the police officers were able to call the PDEA prior to the operation. The CA was convinced that all the elements of the offense charged were established by the prosecution. The CA held that the integrity and evidentiary value of the confiscated item had been preserved, despite the fact that the police officers did not strictly adhere to the procedure outlined in Section 21 of RA 9165 which governs the so-called "buy- bust" operations. It held that the police officers regularly performed their functions. Thus, in its Decision of May 31, 2010, the CA decreed dispositively –

WHEREFORE, premises considered, the Appeal is hereby DISMISSED. The Decision dated February 28, 2007 of the Regional

---

[10] Exhibit "D".

[11] Exhibit "E".

Trial Court (RTC), Branch 58, Cebu City, in Criminal Case No. CBU-75283, is AFFIRMED.

SO ORDERED.[12]

Aggrieved, appellant is now before us seeking the reversal of his conviction faulting the courts below for convicting him of the crime charged. He questions in his Supplemental Brief: (1) the lack of pre-coordination with the PDEA regarding the buy-bust operation, (2) the non-presentation in court of the unnamed "civilian informant" as poseur-buyer, (3) the non-compliance by the police officers with the prescribed procedure under Section 21, Article II of RA 9165 and lastly, the dubious chain of custody of the subject *shabu*.

The Office of the Solicitor General (OSG) prays for the affirmance of the appealed Decision arguing that the essential elements of the offense charged had been adequately established and that the appellant's bare denial cannot prevail over the positive and straightforward testimonies of the police operatives who are presumed to have performed their duties regularly.

**Our Ruling**

The appeal is well-taken.

Prefatorily, we stress again that generally, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight, and will not be disturbed on appeal.[13] Even as this Court must defer to this salutary rule, it must likewise pay homage to a higher duty which is to dispense real, conscientious and honest-to-goodness justice by conducting a thorough examination of the entire records of the case based on the settled principle that an appeal in a criminal case opens the whole case for review on all questions including those not raised by the parties.[14]

---

[12] CA *rollo*, p. 89.

[13] *People v. Pepino-Consulta*, G.R. No. 191071, August 28, 2013, 704 SCRA 276, 294 citing *People v. Kamad*, 624 Phil. 289 (2010).

[14] See *People v. Dulay*, G.R. No. 193854, September 24, 2012, 681 SCRA 638, 646.

The appellant contends that the belated submission of the pre-operation report to the PDEA after the buy-bust operation violates RA 9165; and that the non-presentation of the unnamed "civilian informant" who allegedly brokered the transaction with him casts serious doubts on the factuality of the buy-bust operation.[15]

There is no merit in this contention.

We held in *People v. Abedin*[16] that coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation; that in fact, even the absence of coordination with the PDEA will not invalidate a buy-bust operation.[17] Neither is the presentation of the informant indispensable to the success in prosecuting drug-related cases.[18] Informers are almost always never presented in court because of the need to preserve their invaluable service to the police. Unless their testimony is absolutely essential to the conviction of the accused, their testimony may be dispensed with since their narrations would be merely corroborative to the testimonies of the buy-bust team.

*Adherence to the chain of custody rule not established.*

In this ultimate recourse, appellant focuses his principal argument on the alleged failure of the prosecution to establish a continuous and unbroken chain of custody of the seized illegal drug and the lack of integrity of the evidence in view of the police officers' non-compliance with Section 21, Article II of RA 9165.

---

[15] *People v. Arriola*, G.R. No. 187736, February 8, 2012, 665 SCRA 581, 602 citing *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359.

[16] G.R. No. 179936, April 12, 2012, 669 SCRA 322, 337-338.

[17] *People v. Arriola*, *supra* at 602-603, citing *People v. Roa*, *supra*.

[18] *People v. Monceda*, G.R. No. 176269, November 13, 2013, 709 SCRA 355, 370.

"In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."[19] The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence beyond reasonable doubt plus the fact of its delivery and/or sale are both vital and essential to a judgment of conviction in a criminal case.[20] And more than just the fact of sale, "[o]f prime importance therefore x x x is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed."[21]

The Dangerous Drugs Board Regulation No. 1, Series of 2002, defines chain of custody as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition

---

[19] *People v. Kamad*, *supra* note 13 at 300.

[20] *People v. Obmiranis*, 594 Phil. 561, 569 (2008).

[21] *Catuiran v. People*, 605 Phil. 646, 655 (2009).

in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While the testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard obtains in case the evidence is susceptible of alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain or custody rule.[22]

Measured by the foregoing yardstick, we find that the prosecution utterly failed to establish convincingly the chain of custody of the alleged seized plastic pack subject matter hereof. In fact only PO2 Enriquez and SPO1 Cañete testified in respect to the identity of the alleged evidence. However, from their testimonies, the prosecution was not able to account for the linkages in the chain while the plastic pack was not or no longer in their respective possession.

While both witnesses testified that after the sale and apprehension of the appellant, the poseur-buyer turned over the subject pack of *shabu* to their team leader SPO1 Espenido, there is no record as to what happened after the turn-over. SPO1 Espenido to whom the specimen was allegedly surrendered by the poseur- buyer was not presented in court to identify the person to whom it was given thereafter and the condition thereof while it was in his possession and control. The prosecution did not bother to offer any explanation for his non-presentation as a witness. This is a significant gap in the chain of custody of the illegal stuff.

---

[22] *Mallillin v. People*, 576 Phil. 576, 587-588 (2008), citing *United States v. Howard-Arias*, 679 F.2d 363, 366.

The prosecution's cause is also marred by confusion and uncertainty regarding the possessor of the pack of *shabu* when it was brought to the police station. By PO2 Enriquez's account, it was SPO2 Nuñez who was in possession of the same – an account which is at loggerheads with the claim of SPO1 Cañete that he was in custody and possession thereof and that he personally brought the same to the police station. These police officers cannot seem to agree on a point over which there could hardly be a disagreement. It must be observed that SPO2 Nuñez who had supposedly taken custody of the substance following PO2 Enriquez's account was likewise not presented in court to testify. Worse, the prosecution did not even try to reconcile this inconsistency. Moreover, the prosecution failed to show how, when and from whom SPO2 Nuñez or SPO1 Cañete received the evidence. There was no evidence on how they came into possession of the pack of *shabu*. Again, this is a clear missing link in the chain of custody of the specimen after it left the hands of SPO1 Espenido.

We also take note that the testimonies of the prosecution witnesses failed to identify the person to whom the specimen was given at the police station. All that has been said is that the investigator, SPO2 Nuñez, marked the specimen. But this statement did not necessarily mean that he was the same officer who received the same from either PO2 Enriquez or SPO1 Cañete. In fact, there is a total want of evidence tending to prove that fact. It must be recalled that SPO2 Nuñez did not take the witness stand to identify the specific marking on the alleged specimen; neither did the prosecution adduce conclusive proof as to the author of the handwriting affixed therein and admit the same as his own handwriting.

True, PO2 Enriquez claimed that he personally delivered to the crime laboratory the specimen attached to the letter-request; nonetheless, he did not categorically testify that the substance presented in court was the very same substance delivered to the crime laboratory for analysis. In fact, going by the records neither of the two police officers testified that the substance delivered to the crime laboratory for chemical analysis and later presented in court was the same substance seized from the appellant.

Nor can the prosecution gain from the testimony of the forensic chemist PCI Salinas. The records show that there is nothing positive and convincingly clear from the testimony of PCI Salinas. She did not at all categorically and straightforwardly assert that the alleged chemical substance that was submitted for laboratory examination and thereafter presented in court was the very same substance allegedly recovered from the appellant. If anything, the sum and substance of her testimony is that the alleged pack of *shabu* submitted to her for laboratory examination showed that it was positive for methamphetylane hydrochloride or *shabu*. She never testified where the substance came from. Her testimony was limited only on the result of the examination she conducted and not on the source of the substance.

"[W]hile the chain of custody should ideally be perfect [and unbroken], in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.'"[23] As such, what is of utmost importance "is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused."[24] In the case at bench, this Court finds it exceedingly difficult to believe that the integrity and evidentiary value of the drug have been properly preserved by the apprehending officers. The inexplicable failure of the police officers to testify as to what they did with the alleged drug while in their respective possession resulted in a breach or break in the chain of custody of the drug. In some cases,[25] the Court declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of the *shabu* plus the irregular manner which plagued the handling of the evidence before the same was offered in court, whittles down the chances of the government to obtain a successful prosecution in a drug-related case.

---

[23] *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368.

[24] *Id*.

[25] *Mallillin v. People*, *supra* note 22; *People v. Obminaris*, *supra* note 20; *People v. Garcia*, 599 Phil. 416 (2009) and *Cariño v. People*, 600 Phil. 433 (2009).

Here, apart from the utter failure of the prosecution to establish an unbroken chain of custody, yet another procedural lapse casts further uncertainty about the identity and integrity of the subject *shabu*. We refer to the non- compliance by the buy-bust team with the most rudimentary procedural safeguards relative to the custody and disposition of the seized item under Section 21(1),[26] Article II of RA 9165. Here, the alleged apprehending team after the alleged initial custody and control of the drug, and after immediately seizing and confiscating the same, never ever made a physical inventory of the same, nor did it ever photograph the same in the presence of the appellant from whom the alleged item was confiscated. There was no physical inventory and photograph of the item allegedly seized from appellant. Neither was there any explanation offered for such failure.

While this Court in certain cases has tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165, such liberality, as stated in the Implementing Rules and Regulations[27] can be applied only when the evidentiary value

---

[26] Sec. 21. *Custody and Disposition of Confiscated Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drug shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[27] Section 21(a): The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided

and integrity of the illegal drug are properly preserved as we stressed in *People v. Guru*.[28] In the case at bar, the evidentiary value and integrity of the alleged illegal drug had been thoroughly compromised. Serious uncertainty is generated on the identity of the item in view of the broken linkages in the chain of custody. In this light, the presumption of regularity in the performance of official duty accorded the buy-bust team by the courts below cannot arise.

**WHEREFORE**, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00688 dated May 31, 2010 is **REVERSED** and **SET ASIDE**. Appellant Fernando Ranche Havana a.k.a. Fernando Ranche Abana is hereby **ACQUITTED** of the charge, his guilt not having been established beyond reasonable doubt.

The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** the accused from custody, unless he is held for another lawful cause.

**SO ORDERED**.

*Carpio (Chairperson), Brion, Mendoza,* and *Leonen, JJ.,* concur.

---

that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[28] G.R. No. 189808, October 24, 2012, 684 SCRA 544, 558.

**THIRD DIVISION**

[G.R. Nos. 198916-17. January 11, 2016]

**MALAYAN INSURANCE COMPANY, INC.,** *petitioner, vs.* **ST. FRANCIS SQUARE REALTY CORPORATION,** *respondent.*

[G.R. Nos. 198920-21. January 11, 2016]

**ST. FRANCIS SQUARE REALTY CORPORATION,** *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS; FINAL AND CONCLUSIVE AND NOT REVIEWABLE BY THE SUPREME COURT ON APPEAL; EXCEPTIONS.—** In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. As exceptions, however, factual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section Nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the

CIAC, and (8) when a party is deprived of administrative due process. Apart from conflicting findings of fact of the CA and the CIAC as to the propriety of some arbitral awards, mathematical computations, and entitlement to claim certain costs as part of the amount necessary to complete the project, none of the other exceptions above was shown to obtain in this case. Hence, the Court will not disturb those findings where the CA and the CIAC are consistent with each other, but will review their findings which are inconsistent and cannot be reconciled.

**2. CIVIL LAW; CONTRACTS; INTERPRETATION OF; INTEREST EXPENSE SHOULD NOT BE INCLUDED IN THE COMPUTATION OF THE ACTUAL REMAINING CONSTRUCTION COST (ARCC) BECAUSE IT IS NOT ACTUAL EXPENDITURE NECESSARY TO COMPLETE THE PROJECT, BUT MERE FINANCIAL COST.—** The Court upholds the Construction Industry Arbitration Commission (CIAC) ruling to disallow the interest expense from loans secured by Malayan to finance the completion of the project, and thus, reverses the CA ruling that such expense in the amount of ₱39,348,659.88 should be included in the computation of the ARCC. As correctly held by the CIAC, only costs directly related to construction costs should be included in the Actual Remaining Construction Cost (ARCC). Interest expense should not be included in the computation of the ARCC because it is not an actual expenditure necessary to complete the project, but a mere financial cost. x x x Further negating Malayan's claim that interest expense should be included in the computation of the ARCC is the restrictive construction industry definition of the term "construction cost" which means the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner. Aside from the fact that such expense is not a directly related construction cost, Section 2 of the MOA states that Malayan's investment includes, among other matters, the amount it had paid to RCBC, on behalf of ASB, for the principal loan to finance the project, but not the interest thereof. This casts doubt on Malayan's claim that the parties intended interest expense to become part of their capital contribution, let alone the ARCC.

**3. ID.; ID.; ID.; ACTUAL REMAINING CONSTRUCTION COST (ARCC); THE TERM ARCC SHOULD ONLY BE CONSTRUED IN THE LIGHT OF ITS PLAIN MEANING WHICH IS THE ACTUAL EXPENDITURES NECESSARY TO COMPLETE THE PROJECT, AND IT IS NOT EQUIVALENT TO THE TERM INVESTMENT IN THE MOA; APPLICATION IN CASE AT BAR.—** After a careful review of the MOA as to the scope and meaning of the term "ARCC," the Court sustains the CIAC that such term should be understood as the actual expenditures necessary to complete the project, which is the traditional "construction" sense rather than the "investment" sense. The Court thus reverses the CA's ruling that the parties' intention was to also include in the computation of the ARCC whatever expenditures relative to the actual completion of the project, as such expenses are considered as their investment subject to the proportionate sharing after determining the actual construction cost. It bears stressing that the intent of the parties in entering into the MOA is to provide for the terms and conditions of the completion of the Project and the allocation of the ownership of condominium units in the Project among themselves. x x x The term ARCC should only be construed in light of its plain meaning which is the actual expenditures necessary to complete the project, and it is not equivalent to the term "investment" under the MOA. x x x Hence, the Court holds that the ARCC, which pertains only to the amount necessary to complete the project, can be considered as part of the capital investment, but they are not synonymous. Likewise negating Malayan's argument that all its contribution to complete the project should be included in the ARCC is the restrictive construction industry definition of "construction cost", to wit: the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.

**4. ID.; ID.; ID.; ID.; INPUT VALUE ADDED TAX (VAT) SHOULD BE ALLOWED TO REMAIN IN THE ARCC; RATIONALE.—** The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, ARCC refers to the actual

expenditures made by Malayan to complete the project. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order to complete the project. Moreover, that the burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record, which separately indicated the VAT component in accordance with Section 113(B) of the Tax Code.

**5. ID.; ID.; ID.; ID.; INCLUSION OF INPUT VAT IN THE ARCC DOES NOT RESULT IN UNJUST ENRICHMENT; ELUCIDATED.—** Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against its output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of the goods, properties and services it had procured to complete the project. At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and transfer of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to the buyer is credited against the buyer's output

taxes when it in turn sells the taxable goods, properties or services.

**6. ID.; ID.; ID.; WHEN A BUILDING CONTRACT REFERS TO THE PLANS AND SPECIFICATIONS AND SO MAKES THEM PART OF ITSELF, THE CONTRACT IS TO BE CONSTRUED AS TO ITS TERMS AND SCOPE TOGETHER WITH THE PLANS AND SPECIFICATIONS.—** When a building contract refers to the plans and specifications and so makes them a part of itself, the contract is to be construed as to its terms and scope together with the plans and specifications. When the plans and specifications are by express terms made part of the contract, the terms of the plans and specifications will control with the same force as if they were physically incorporated in the very contract itself. Malayan cannot, therefore, brush aside Schedule 6 as "general" and "for reference only" matters in the interpretation of the MOA. As to the costs incurred due to the supposed reasonable deviations from specifications in the exercise of its sound discretion as the developer, Malayan would do well to bear in mind that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Under Section 5 of the MOA, Malayan undertook to construct, develop and complete the project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 thereof. As duly pointed out by the CIAC, since the parties to the MOA had agreed on the specifications that will control the construction and completion of the project, anything that alters or adds to these specifications which adds to the costs, should not be part of the ARCC.

## APPEARANCES OF COUNSEL

*Justin Christopher C. Mendoza* for Malayan Insurance Company, Inc.

*Teodoro C. Baroque* for St. Francis Square Realty Corporation.

## D E C I S I O N

**PERALTA, *J.*:**

This resolves the *Petition for Partial Review on Certiorari under Rule 45 of the Rules of Court* filed by Malayan Insurance Company, Inc. and the *Petition for Review* filed by St. Francis Square Realty Corporation, both seeking to reverse and/or modify the Court of Appeals Decision[1] dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, which affirmed with modifications the Award[2] dated March 27, 2009 of the Construction Industry Arbitration Commission (*CIAC*) in CIAC CASE No. 33-2008 entitled "ST. FRANCIS SQUARE REALTY CORPORATION, Claimant, -versus- MALAYAN INSURANCE COMPANY, INC., Respondent."

Malayan Insurance Company, Inc. *(Malayan)* is a duly-organized domestic corporation engaged in insurance business. Formerly known as ASB Realty Corporation (*ASB*), St. Francis Square Realty Corporation (St. Francis) is a duly-organized domestic corporation engaged in real estate development.

The admitted facts are as follows:

1. The parties' respective juridical existence;

    1.1 The ASB Group of Companies, which include the ASB Really Corporation (now St. Francis Square Realty Corp.), is under rehabilitation with the Securities and Exchange Commission (SEC) pursuant to a petition dated May 2, 2000;

2. [Malayan], as Owner, and [St. Francis], as Developer, executed a Joint Project Development Agreement (JPDA) on 09 November 1995 for the construction, development and completion of what was then known as "ASB Malayan Tower" ("the Project"), originally a 50-storey office/

---

[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Jane Aurora C. Lantion, concurring.

[2] Rendered by the Arbitral Tribunal composed of Alredo F. Tadiar, Chairman, and Victor P. Lazatin and Ricardo B. San Juan, as Members.

residential condominium located at the ADB Avenue cor. Opal St., Ortigas Center, Pasig City.

3. [Malayan] is the absolute and registered owner of the parcel of land (the Lot) in Pasig City where the Project is located, as evidenced by Transfer Certificate of Title No. PT-78585 xxx;

4. The Certificate of Registration No. 96-04-2701 issued by the Housing Land Use and Regulatory Board (HLURB) on 12 April 1996 shows that [Malayan] is the Owner and [St. Francis] is the developer xxx;

5. The License to Sell No. 96-05-2844 issued by the HLURB also refers to [Malayan] as the Owner and [St. Francis] as Developer xxx;

6. The Master Deed with Declaration of Restrictions of the ASB- Malayan Tower dated 13 May 1996 approved by the HLURB and registered with the Register of Deeds of Pasig City, sets forth Malayan as "the Developer (absolute and registered owner) x x x;

7. ASB Realty Corporation [now, St. Francis] was not able to complete the Project;

    7.1 The parties executed a Memorandum of Agreement (MOA) on 30 April 2002, under which [Malayan] undertook to complete the condominium project then known as "ASB Malayan Project" that later became "Malayan Plaza Tower" xxx;

8. The MOA was approved by the SEC;

9. The Lot was the subject of a Contract to Sell between [Malayan] as seller and [St. Francis] as buyer, but [St. Francis] was unable to completely perform its obligation under the Contract to Sell;

10. Under Sec. 2 of the MOA, [Malayan] *"shall invest the amount necessmy to complete the Project",* among other obligations;

11. The basis for the distribution and disposition of the condominium units is the parties' respective capital investments in the Project as provided in Sec. 4 of the MOA;

11.1 [St. Francis] represented and warranted to Malayan that Malayan can complete the Project at a cost not exceeding Php452,424,849.00 (the Remaining Construction Cost [RCC]) [Sec. 9 of MOA].

12. The net saleable area included in Schedule 4 of the 30 April 2002 MOA ("Reserved Units") originally covered fifty-three (53) units with thirty-eight (38) parking spaces. The aforesaid 53 Reserved Units became only thirty-nine (39) units after a reconfiguration was done;

13. The aggregate monetary value of the Reserved Units as fixed by [St. Francis], is One Hundred Seventy-Five Million Eight Hundred Fifty-Six Thousand Three Hundred Twenty-Three Pesos and 05/100 (₱175,856,323.05);

14. Under the MOA, [Malayan] assumed vast powers and revoked all authorities previously granted to [St. Francis] (Section 8 of the MOA, xxx), with the exception of including [St. Francis] in the bidding committee for bidding of material and services requirements of the Project (Section 9, paragraph v of the MOA, xxx). The general supervision, management and control of the day- to-day operations were undertaken by [Malayan] (Section 5, paragraph b of the MOA, xxx) but under Sec. 9 of the MOA, "Malayan shall allow one (l) representative of [St. Francis] to observe the development and completion of the Project";

15. On 24 August 2006, [St. Francis] sent a letter to [Malayan] seeking to reconcile several items amounting to ₱l33.64 million xxx;

16. There was a change in the specification of the floor finish from Narra Parque[t] to Kendall Laminated Flooring;

17. [Malayan] made interest expense, amounting to ₱37,705,346.62 as of August 2006, as part of its actual construction cost on that date;

18. [St. Francis] filed a case against the Register of Deeds of Pasig City and Atty. Francis Serrano docketed as OMB-C-C-06-0583-J before the Office of the Ombudsman due to alleged alterations on the Condominium Certificates of Title over the units comprising the net saleable area in Schedule 4 of the MOA;

19. [Malayan] has included some of the units under Schedule 4 of the MOA in the condotel pool managed by Quantum Hotels and Resorts from which it derives income;

20. Despite the completion of the Project and the turnover of the units to [St. Francis], [Malayan], and other buyers of units, the issue of actual cost of construction has not been resolved to the mutual satisfaction of the parties; and

21. The parties agreed to submit a list of documents that they admitted the authenticity and due execution thereof.[3]

On November 7, 2008, St. Francis filed with the CIAC a Complaint with Prayer for Interim Relief against Malayan. St. Francis alleged that in August 2006, it secured a copy of a document entitled "cost to complete" from Malayan which fixed the Actual Remaining Construction Cost *(ARCC)* at ₱614,593,565.96. It disputed several cost items in the ARCC, amounting to ₱145,487,496.42, and argued that their exclusion would entitle it to some reserved units.

On December 8, 2008, Malayan filed a Verified Answer *(With Grounds for Immediate Dismissal),* claiming that St. Francis failed to state a cause of action because the ARCC had already reached ₱635,018,369.05 as of November 30, 2008, thereby exceeding the Remaining Construction Cost *(RCC)* [₱452,424,849.00] by more than the aggregate value of the reserved units [₱175,856,323.05]; hence, St. Francis is no longer entitled to any of such units.

On January 20, 2009, a preliminary conference was held where the parties stipulated on facts, formulated issues, and drafted and signed the Terms of Reference *(TOR)* which would govern the proceedings of the case. Aside from the above-stated admitted facts, the TOR, which was later amended, listed the following issues to be determined by the CIAC:

2. What is the meaning or scope of the term Remaining Construction Cost (RCC) as used in the MOA as stated in Par. 11.1 of the Admitted Facts?

---

[3] *Rollo* (G.R. Nos. 198916-17), Vol. 1, pp. 178-179. (Citations omitted)

2.1. What is the meaning or scope of the term "actual remaining construction cost" as used in the MOA?

2.2. Specifically, were the following costs and expenses part of the actual remaining construction cost incurred by [Malayan] and questioned by [St. Francis] to wit:

2.2.1. Awarded contracts, specifically those pertaining to Narra Parquet Works, Interior Design Works, Sanitary/Plumbing and Fire Protection Works, Additional Consultant's Fees and Audio Intercom and Paging System;

2.2.2. Change Orders, pursuant to the reconfiguration done on several of the units;

2.2.3. Interest Expense from loans incurred to finance the construction, development and completion of the Project;

2.2.4. Input Value Added Taxes ("VAT") paid to the government for goods and services utilized from the Project;

2.2.5. Attendance Fees;

2.2.6. Alleged Prolongation Costs and Extended Overhead;

2.2.7. Judgment Award in CIAC Case No. 27-2007 (TVI v. MICO); *[Additional issue from TOR Amendment]*

2.2.8. Contractor's All Risk Insurance;

2.2.9. Contingency Costs.

2.2.10 Other costs as mentioned in Exhibit "R-24" *[Additional issue from TOR Amendment]*

3. What is the total capital investment or contribution respectively of [St. Francis] and [Malayan] to the Project per MOA? *[Additional issue from TOR Amendment]*

4. What is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?

5. After completion of the Project and computation of the actual remaining construction costs to complete the same, is [St. Francis] still entitled to any of the Reserved units in Schedule 4 of the MOA?

5.1. If so, is [St. Francis] entitled to the income therefrom?

6. Is [Malayan] entitled to its Counterclaim for the excess in the actual remaining construction cost it incurred vis-a-vis the value of the Reserved Units?

7. Which party is entitled to attorney's fees?

[7.1] How much?

[8.] Which party shall bear the cost of arbitration?[4]

On March 2, 2009, St. Francis submitted the *Joint Affidavit of Witnesses of Claimant,* while Malayan submitted the *Joint Affidavit of Respondent's Witnesses.* Thereafter, both parties submitted their respective Joint Reply-Affidavits. Malayan also filed a *Joint Affidavit of Respondent's Witnesses by Way of (1) Evidence for New Issue No. 3 Defined under the Amended Terms of Reference; (2) Sur-Rejoinder Affidavit of Claimant's Witnesses; and (3) Redirect Examination.*

Trial ensued during which the witnesses of St. Francis and Malayan testified. Both parties likewise submitted Lists of Exhibits. After trial, the parties simultaneously filed on April 27, 2009 their respective Memoranda in the form of Draft Decisions.

On May 27, 2009, the CIAC rendered its Award, the dispositive portion of which states:

**WHEREFORE**, AWARD is hereby made as follows:

**FOR THE CLAIMANT**[St. Francis]:

**GRANT[S]** its claims for **DISALLOWANCES** amounting to **₱52,864,385.00** from the ARCC of **₱614,593.565.96** under Exhibit C-3;

**ALLOCATES** 37.8% ownership over the Reserved Units **(₱66,551,993.09/₱175,856,325.05)**;

As a consequence of these awards, Respondent [Malayan] is hereby DlRECTED to deliver possession and transfer title over the Reserved Units in the proportion hereby stated.

**GRANTS 37.8%, proportionate share of the income realized from rentals of the Reserved Units up to the present date.**

---

[4] *Rollo* (G.R. Nos. 198916-17), Vol. 1, pp. 180-181.

As a consequence of these awards, Respondent [Malayan] is hereby DIRECTED to pay the Claimant [St. Francis] its proportionate share in the income from the Reserved Units.

**FOR THE RESPONDENT** [Malayan]:

**ALLOCATES 62.2%** proportionate share of the income realized from rentals of the Reserved Units up to the present date **(₱109,304,331.96/₱175,856,325.05)**;

**GRANTS 62.2% proportionate share of the income realized from rentals of the Reserved Units up to the present date.**

FOR BOTH CLAIMANT [St. Francis] and RESPONDENT [Malayan], all their Claims and Counterclaims for Attorney's Fees arc DENIED. Arbitration costs are maintained according to the *pro rata* sharing that they had initially shared.

SO ORDERED.[5]

Dissatisfied with the CIAC Award, both parties filed with the Court of Appeals (*CA)* their respective Petitions for Review under Rule 43 of the Rules of Court. On January 27, 2011, the CA affirmed with modifications the CIAC Award, the dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the CIAC's Award is hereby **AFFIRMED** subject to the following modifications:
>
> 1) The total amount of deductions should be **₱l5,135,166.51** and this is, in turn, shall be deducted from the Total Actual Remaining Construction Cost of **₱615,880,672.47** to arrive at the Net amount of **₱600,745,505.96** as computed above;
>
> 2) St. Francis should be entitled to 16% ownership over the reserved units (₱27,535,668.09/₱175,856,325.05) ownership of the reserved units to be done by drawing of lots with the corresponding interest thereon;
>
> 3) As a consequence of the above awards, Malayan is hereby DIRECTED to deliver possession and transfer title over the reserved units in accordance and in the proportion above-stated and to pay St. Francis its proportionate share in the income

---

[5] *Rollo* (G.R. Nos. 198920-21), p. 618. (Emphasis in the original)

from the reserved units reckoned from the date of completion of the Project, that is from June 7, 2006 up to the finality of this decision, and to render full accounting of all the rentals and such other income derived from said reserved units so awarded to St. Francis;

4) Arbitration Costs shall be maintained *pro rata* in accordance with their respective shares in the reserved units.

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis hereunder;

6) The concerned Register of Deeds is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Condominium Certificates of Title Covering the reserved units herein awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated 27 May 2009 not affected by the above modifications are affirmed. No costs.

SO ORDERED.[6]

Aggrieved by the CA decision, both parties filed their respective motions for reconsideration, which were denied in the Resolution dated October 4, 2011. Hence, the present petitions of both parties.

St. Francis raises the following issues:

I.

The Court of Appeals gravely erred in ruling that interest [expenses] should be part of the actual remaining construction cost. The ruling is contrary to law and the evidence on record.

II.

The Court of Appeals committed serious error in finding that the actual construction cost is ₱554,583,160.20. The ruling is contrary to law and the evidence on record.

---

[6] *Rollo* (G.R. Nos. 198916-17),Vol. 1, pp. 134-135.

III.

The Court of Appeals erred in considering VAT as part of the ARCC. This is contrary to the facts and records of the case.

IV.

The Court of Appeals committed grave error in allowing the inclusion of the alleged cost of the Contractor's All Risk Insurance as part of the ARCC. This is contrary to law and the records of the case.

V.

The Court of Appeals committed grave and serious error on its allocation of the reserved units. This is contrary to law and the records of the case.[7]

On the other hand, Malayan raises the following issues:

A.

THE COURT OF APPEALS COMMITTED SERIOUS LEGAL ERROR IN PLACING THE BURDEN ON MALAYAN TO PROVE THAT IT HAD ACTUALLY INCURRED THE ARCC, DESPITE THE FACT THAT DURING THE ARBITRAL PROCEEDINGS, ST. FRANCIS HAD NEVER DISPUTED, AND THEREFORE, ADMITTED, THAT MALAYAN HAD INCURRED THE ARCC. THE COURT OF APPEALS THUS DECIDED A QUESTION OF SUBSTANCE DEFINITELY NOT IN ACCORD WITH THE BASIC LEGAL PRINCIPLE THAT A PARTY NEED NOT PROVE WHAT HAS NOT BEEN RAISED, DISPUTED OR PUT IN ISSUE.

B.

THE COURT OF APPEALS SERIOUSLY ERRED IN ALLOWING ST. FRANCIS TO BELATEDLY CHANGE ITS THEORY IN ITS DRAFT DECISION FILED WITH THE CIAC AND ITS APPEAL. THE COURT OF APPEALS THUS DECIDED A QUESTION OF SUBSTANCE IN DISREGARD OF THE BASIC DUE PROCESS TENET THAT A PARTY CANNOT CHANGE ITS THEORY AFTER TRIAL OR ON APPEAL BECAUSE IN BOTH CASES THE OTHER PARTY IS DEPRIVED OF THE OPPORTUNITY TO MEET THE NEW ISSUES.

---

[7] *Rollo* (G.R. Nos. 198920-21), p. 89.

C.

THE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING UNCONTROVERTED TESTIMONIAL EVIDENCE THAT MALAYAN HAD ACTUALLY INCURRED ITS ARCC, AND FOCUSING EXCLUSIVELY ON DOCUMENTARY EVIDENCE.

D.

THE COURT OF APPEALS SERIOUSLY ERRED IN EXCLUDING THE FOLLOWING COSTS FROM THE ARCC, DESPITE THE FACT THAT THEY WERE PROPER, NECESSARY AND REASONABLE FOR THE COMPLETION OF THE PROJECT:

1. CHANGE ORDERS DUE TO RECONFIGURATION;

2. CHANGE ORDERS NOT DUE TO RECONFIGURATION;

3. HALF OF THE COSTS FOR THE NARRA PARQUET WORKS;

4. HALF OF THE COSTS FOR THE COMPREHENSIVE ALL-RISK INSURANCE (CARI);

5. HALF OF THE COSTS FOR THE INTERIOR DESIGN WORKS;

6. CONTINGENCY COSTS; AND

7. COSTS INCURRED AND/OR PAID AFTER JUNE 2006.

E.

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT ST. FRANCIS IS ENTITLED TO SOME OF THE RESERVED UNITS. MALAYAN'S ARCC EXCEEDED THE ST. FRANCIS WARRANTED RCC BY MORE THAN THE VALUE OF THE RESERVED UNITS. HENCE, ST. FRANCIS SHOULD NOT GET EVEN ONE OF THE RESERVED UNITS.

F.

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT ST. FRANCIS IS ENTITLED TO THE INCOME RECEIVED BY MALAYAN FROM ST. FRANCIS'S (sic) SHARE IN THE RESERVED UNITS, IF ANY, MALAYAN IS ENTITLED TO ALL OF THE RESERVED UNITS. AND EVEN ASSUMING

ARGUENDO THAT ST. FRANCIS IS ENTITLED TO SOME RESERVED UNITS, THE COURT OF APPEALS' DIRECTIVE IS IN DISREGARD OF ARTICLE 1187 OF THE CIVIL CODE.

G.

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT AWARDING MALAYAN ITS COUNTERCLAIMS AS WELL AS ATTORNEY'S FEES, AND IN NOT ORDERING ST. FRANCIS TO BEAR ALL THE COSTS OF ARBITRATION.[8]

The Court finds partial merit in both the petition for review of St. Francis and the petition for partial review on *certiorari* of Malayan.

In resolving *in seriatim* all the issues raised by both parties, the Court is guided by the rule that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.[9]

As exceptions, however, factual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section Nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon

---

[8] *Rollo* (G.R. Nos. 198916-17), Vol. l, pp. 62-63.

[9] *Shinryo (Philippines) Company, Inc. v. RRN, Incorporated,* G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System,* 618 Phil. 304, 313 (2009).

the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of Jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA arc contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.[10] Apart from conflicting findings of fact of the CA and the CIAC as to the propriety of some arbitral awards, mathematical computations, and entitlement to claim certain costs as part of the amount necessary to complete the project, none of the other exceptions above was shown to obtain in this case. Hence, the Court will not disturb those findings where the CA and the CIAC are consistent with each other, but will review their findings which are inconsistent and cannot be reconciled.

The Court will discuss first the issues raised by St. Francis.

*I. Interest expense*

The CIAC stated that only costs directly related to construction costs can be included in the ARCC because such intention of the parties in the MOA can be inferred from the fact that the baseline or starting point tor the determination of the ARCC is the estimate made by St. Francis based on Schedule 9 of the MOA.[11] The CIAC held that the ARCC was intended to be spent within and among the four categories above exclusively, subject

---

[10] *IBEX International, Inc. v. Government Service Insurance System, Ibid.,* citing *Uniwide Sales Realty and Resources Corporation v. Titan-lkeda Construction and Development Corporation,* 540 Phil. 350 (2009) and *David v. Construction Industry and Arbitration Commission,* 479 Phil. 578 (2004).

[11] Estimated Cost to Complete

| | | |
|---|---|---|
| I. | Balance to Complete Existing Contracts – | Php 161,098,039.86 |
| II. | Unawarded Contracts | 224,045,419.16 |
| III. | Professional Fee | 4,138,108.08 |
| IV. | Contingencies | 63,143,281.10 |
| | | Php 452,424,849.10 |

to adjustments by reason of price increases and awarded contracts. It also rejected Malayan's theory that costs which are not directly incurred for the construction, but which are actually related to it and to the completion of the building, should be included in the ARCC. According to the CIAC, such could not have been the intention of the parties; otherwise, St. Francis would be placed at the complete mercy of Malayan since the determination of what costs are related to construction is left to the latter's entire discretion. Had such been the intention, the parties would have set up standards to guide the discretion in determining what expenses or costs are related to construction so as to be included in the term ARCC. Without such standards, the validity of the MOA would have been questionable, as its interpretation would contravene Article 1308 of the New Civil Code which provides that the performance of a contract cannot be left to the will of one of the parties.

The CA reversed the CIAC ruling and held that Malayan had to obtain loans in order to finance the completion of the project, and in doing so, it incurred interests which are deemed as an accessory of such loans. It added that actual expenditures should not be limited only to traditional construction costs as the parties' intention was to include those relative to the actual completion of the project, for which Malayan had to invest in the form of seeking loan facilities from banking institutions in order to fully finance the obligations set forth in the MOA. It also stressed that it was specifically stated in the MOA that the parties' investment in the project would be distributed in accordance with their respective contributions.

St. Francis contends that interest expense should not be included in the computation of the Actual Remaining Construction Cost *(ARCC).* According to St. Francis, the term ARCC should be understood in its ordinary context or plain meaning. The word "construction" refers to all on- site work on buildings or altering structures from land clearance through completion, including excavation, erection and the assembly and installation of components and equipment. Plainly, ARCC is the actual cost of completing and building the structure which is the condominium/project.

Malayan counters that the MOA itself is replete with provisions recognizing the parties' contractual intent to include the ARCC interest expense and the parties' respective capital contributions or investment in the project. Such intent is confirmed by the parties' contemporaneous and subsequent acts when St. Francis' own interest expense was credited to determine the number of units it was entitled to.

The Court upholds the CIAC ruling to disallow the interest expense from loans secured by Malayan to finance the completion of the project, and thus, reverses the CA ruling that such expense in the amount of ₱39,348,659.88 should be included in the computation of the ARCC. As correctly held by the CIAC, only costs directly related to construction costs should be included in the ARCC. Interest expense should not be included in the computation of the ARCC because it is not an actual expenditure necessary to complete the project, but a mere financial cost. As will be discussed later, the term ARCC should be construed in its traditional "construction" sense, rather than in the "investment" sense.

It also bears emphasis that part of Malayan investment under Section 2 of the MOA[12] is the payment of ₱65,804,381.00 as the principal amount of the loan obtained by ASB from the Rizal Commercial Banking Corporation (*RCBC*) to finance the project. If it were the intention of the parties to include interest expense as part of their investments, or even the ARCC, then

---

[12] Section 2. *Investment of Malayan.* Subject to the provisions of Section 9 below, Malayan shall invest the amount necessary to complete the Project and the following amounts:

a. ₱65,804,381 representing payment by Malayan, on behalf of ASB, of the principal amount as or signing hereof of the loan obtained by ASB from the Rizal Commercial Banking Corporation to finance the Project; and

b. ₱38,176,725 representing payment by Malayan, on behalf of ASB, of ASB's outstanding obligations to contractors of the Project as of signing hereof (i) by offsetting from said obligations the legally compensable ₱25,463,771 total advances of said contractors from ASB as set forth in Section 5 (g) and (ii) by paying the net payable to contractors/suppliers in the amount of ₱12,712,954.

the MOA would have expressly indicated such intent in the provisions on investments of Malayan and of ASB. Nowhere in the provisions of the MOA can it be gathered that interest expense is included in the computation of the ARCC.

Apart from the ARCC's definition as actual expenditures necessary to complete the project, the closest provision in the MOA that could shed light on the scope and meaning of ARCC is Section 9 on the Remaining Construction Cost (*RCC*) whereby St. Francis represented and warranted that Malayan can complete the project at a cost not exceeding ₱452,424,849.00 as set forth in ASB's Construction Budget Report, which reads:

Estimated Cost to Complete

| | |
|---|---|
| I. Balance to Complete Existing Contracts – | Php 161,098,039.86 |
| II. Unawarded Contracts | 224,045,419.16 |
| III. Professional Fee | 4,138,108.08 |
| IV. Contingencies | 63,143,281.10 |
| | Php 452,424,849.10 |

The Court concurs with the CIAC that the ARCC was intended to be spent within and among the four categories above, subject to adjustments by reason of price increases and awarded contracts. In construction parlance, "contingency" is an amount of money, included in the budget for building construction, that is uncommitted for any purpose, intended to cover the cost of unforeseen factors related to the construction which are not specifically addressed in the budget.[13] Being a cost of borrowing money, interest expense from bank loans to finance the project completion can hardly be considered as a cost due to unforeseen factors.

That interest expense cannot be considered as part of any of the said categories is further substantiated by the reports of the Davis Langdon Seah Philippines, Inc. *(DLS)* and Surequest Development Associates *(Surequest),* which contain traditional

[13] Cyril M. Harris, McGraw-Hill, *Dictionary of Architecture and Construction* (Fourth Edition), p. 251.

construction cost components and items, but not investment costs such as interest expense. As the one who engaged the services of both DLS and Surequest to come up with a valuation of the cost to complete the project and to evaluate what had been accomplished in the project prior the take-over, Malayan cannot deny that interest expense is not included in their computation of the construction costs.

As regards the supposed contemporaneous act of St. Francis of including the amount of ₱207,500,000.00 as interest expense in its claim for reimbursement for its contributions in the project, in the form of several units per Schedules 1 and 3 of the MOA, the Court cannot determine whether or not such expense should be considered as its contribution for purposes of computing the return of capital investment. Unlike the investment of Malayan which is specifically stated under Section 2[14] of the MOA, but does not include payment of interest of the bank loan to finance the project, the investment of ASB *(now St. Francis)* is merely described as follows:

> Section 3. *Recognition of ASB's Investment.* The parties confirm that as of the date hereof, ASB invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including ASB's interest as buyer under the Contract to Sell.

From such vague definition of ASB's investment, the Court cannot rule if St. Francis should also be disallowed from claiming

---

[14] Section 2. *Investment of Malayan.* Subject to the provisions of Section 9 below, Malayan shall invest the amount necessary to complete the Project and the following amounts:

a. ₱65,804,381 representing payment by Malayan, on behalf of ASB, of the principal amount as of signing hereof of the loan obtained by ASB from the Rizal Commercial Banking Corporation to finance the Project; and

b. ₱38,176,725 representing payment by Malayan, on behalf of ASB, of ASB's outstanding obligations to contractors of the Project as of signing hereof, (i) by offsetting from said obligations the legally compensable ₱25,463,771 total advances of said contractors from ASB as set forth in Section 5 (g) and (ii) by paying the net payable to contractors/suppliers in the amount of ₱12,712,954. (Emphasis added)

interest expense as part of its investment, unlike Malayan which is disallowed from including interest expense as part of the ARCC contemplated in the MOA, because such financial cost is not an actual expenditure necessary to complete the project. Having in mind the rule that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity,[15] the Court cannot give credence to the August 1, 2000 telefax of Evelyn Nolasco, St. Francis' former Chief Financial Officer (*CFO*), to Malayan CFO, Gema Cheng, which shows St. Francis' computation for reimbursement, including the claim of ₱207,500,000.00 as interest expense.

Further negating Malayan's claim that interest expense should be included in the computation of the ARCC is the restrictive construction industry definition of the term "construction cost" which means the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.[16] Aside from the fact that such expense is not a directly related construction cost, Section 2 of the MOA states that Malayan's investment includes, among other matters, the amount it had paid to RCBC, on behalf of ASB, for the principal loan to finance the project, but not the interest thereof. This casts doubt on Malayan's claim that the parties intended interest expense to become part of their capital contribution, let alone the ARCC.

In view of the foregoing discussion, the Court will no longer delve into Malayan's two other contentions on the issue of interest expense, namely: (1) that since St. Francis only claimed that such expense cannot be included as part of the ARCC as the same is not a direct construction cost, it cannot now change its theory and argue that there is no substantial evidence to show

---

[15] New Civil Code, Art. 1377.

[16] Cyril M. Harris, McGraw-Hill, *Dictionary of Architecture and Construction* (Fourth Edition). p. 251.

that Malayan incurred such expense in completing the project because it is deemed to have admitted the same, and allowing St. Francis to do so would amount to a prohibited change of its theory; and (2) that Malayan was able to prove that it incurred interest expense on loans which were used to finance completion of the project.

***II. Scope and total amount of ARCC***

According to the CIAC, ARCC refers to actual expenditures made by Malayan to complete the project. What is proper and necessary to complete the project is the essence of the dispute between the parties. As used in the MOA, ARCC should be understood in the traditional "construction" sense rather than in "investment" sense. The dispute is a construction dispute and not an investment dispute which would have taken the dispute outside the ambit of construction arbitration. Notably, the cost component/pay items stated in Exhibit *"C-2" (MOA Schedule 9),* Exhibit *"R-7" (Surequest Report)* and Exhibit *"R-8" (Davis Langdon Seah Report)* contain basic and traditional construction cost, and not investment cost which is broader in scope. As to the amount of the ARCC, CIAC held that it is ₱614,593,565.96 as stated in Exhibit *"C-3"*[17] which was prepared by Malayan itself and submitted to St. Francis. Exhibit *"C-3"* listed the expenses incurred as of August 10, 2006 which was close enough to the project completion date of June 7, 2006, as a basis to determine what items should be disallowed therefrom.

Reversing the CIAC's ruling, the CA held that actual expenditures should not be limited only to traditional construction cost as the parties' intention when they executed the MOA was to also include expenditures relative to the actual completion of the project. It noted that the clear intention of the parties that whatever expenditures they have spent shall be considered as their investment subject to the proportionate sharing after determining the actual construction cost, can be gleaned from the following provisions of the MOA:

---

[17] *Rollo* (G.R. Nos. 198920-21), pp. 341-345.

Section 2. Investment of Malayan. Subject to the provisions of Section 9 below, Malayan shall invest the amount necessary to complete the Project and the following amounts:

x x x x x x x x x

Section 3. Recognition of [St. Francis'] Investment. The parties confirm that as of the date hereof, [St. Francis] invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including [St. Francis'] interest as buyer under the Contract to Sell.

Section 4. Distribution and Disposition of Units - (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Cost (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph [b] of Section 4 in the event that the actual remaining construction cost exceeds the Remaining Construction Cost):

The CA stressed that based on its reading of the MOA in its entirety, the ARCC clearly means the "investment" incurred as contributed by Malayan in the completion of the project, and that there being no ambiguity in the MOA, its literal meaning is controlling. The CA added that its interpretation is consistent with the rule that when the terms of agreement have been reduced into writing, it is considered as containing all the terms agreed upon by the parties and there can be between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

As to the amount of the ARCC, the CA found that the gross ARCC based on evidence is ₱554,583,160.20 [Including 1/11% Input VAT and 2% Withholding Tax], while the net payment is ₱552,152,508.70. According to the CA, St. Francis and Malayan correctly argued that the CIAC mainly relied on Exhibit *"C-3"* which is a mere summary of the expenses or a tabulation of figures incurred by Malayan without any other supporting documents to prove the contents and authenticity of the figures

stated therein. In determining the ARCC, the CA thus reviewed the records and ruled that Exhibit *"C-3"* and Exhibit *"R-24"*[18] [Project Cost to Complete as of October 2008 amounting to ₱648,266,145.96] should be utilized *vis-a-vis* Exhibit *"R-48-series"* which contain construction costs and computations supported by receipts, vouchers, checks and other documents that are necessary to arrive at the final computation of the ARCC. In this regard, St. Francis agrees with the CA that Exhibit *"R-48-series"* should be taken into account because it contains computations supported by such documentary evidence, but gravely erred in considering only the summaries in such exhibit without actually verifying and counter-checking if the amounts indicated in the summaries actually correspond to the amounts reflected in the supporting documents. St. Francis points out that the ARCC considered as being claimed by Malayan that are actually receipted is only ₱514,179,217.94 based on Exhibit *"R-48-series."*

Due to the conflicting findings of the CIAC and the CA on the scope, meaning and computation of the ARCC, the Court is compelled to review them in light of the evidence on record.

As duly noted by the CA, the controversy between St. Francis and Malayan lies in the interpretation of the term "Actual Remaining Construction Cost" *(ARCC)* in relation to the Estimated Remaining Construction Cost *(RCC),* in order to determine the proportionate ownership over the reserved units, if any, as embodied in their Memorandum of Agreement dated April 30, 2002, the pertinent provisions of which read:

> Section 4. Distribution and Disposition of Units - (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Cost (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph [b] of

[18] *Id.* at 346-371.

Section 4 in the event that the **actual remaining construction cost** exceeds the Remaining Construction Cost):

x x x x x x x x x

(ii) ASB [now, St. Francis]- the following net saleable area:

(C) provided that the **actual remaining construction** costs do not exceed the Remaining Construction Cost, the net saleable area particularly described in Schedule 4 hereof which shall be delivered to [St. Francis] upon completion of the Project and determination of its actual construction costs. If the **actual remaining construction costs** exceed the Remaining Construction Cost, sub-paragraph (b) of Section 4 shall apply.

(b) In the event that the **actual remaining construction costs** exceed the Remaining Construction Cost as represented and warranted by [St. Francis] to Malayan under Section 9(a) hereof, and Malayan pays for such excess, the *pro rata* sharing in the net saleable area of the Building, as provided in sub-paragraph (a) of this Section 4 shall be adjusted accordingly. In such event, Malayan shall be entitled to such net saleable area in Schedule 4 that corresponds to the excess of the **actual remaining cost** over the Remaining Construction Cost.

x x x x x x x x x

Section 9. Remaining Construction Cost - (a) [St. Francis] represents and warrants to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849) (the Remaining Construction Cost) as set forth in [St. Francis'] Construction Budget Report attached hereto and made an integral part hereof as Schedule 9 that:

x x x x x x x x x

(b) Malayan shall pay for any additional costs and expenses that may be incurred in excess of the Remaining Construction Cost. In such event, it shall be entitled to such net saleable area as indicated in Schedule 4 that corresponds to the increase in remaining construction cost. [St. Francis] shall be entitled to such net saleable area, if any, remaining in the aforesaid Schedule 4.[19]

---

[19] Emphasis added.

The ultimate purpose of determining the ARCC, as simply stated by CIAC, is to determine the proportionate or absolute ownership of the properties over the net saleable area of the building *(Reserved Units),* as provided in sub-paragraph (a) of Section 4 of the MOA, by calculating how much was spent by Malayan to complete the project in excess of the estimate (Remaining Construction Cost) made by St. Francis.

After a careful review of the MOA as to the scope and meaning of the term "ARCC," the Court sustains the CIAC that such term should be understood as the actual expenditures necessary to complete the project, which is the traditional "construction" sense rather than the "investment" sense. The Court thus reverses the CA's ruling that the parties' intention was to also include in the computation of the ARCC whatever expenditures relative to the actual completion of the project, as such expenses are considered as their investment subject to the proportionate sharing after determining the actual construction cost.

It bears stressing that the intent of the parties in entering into the MOA is to provide for the terms and conditions of the completion of the Project and the allocation of the ownership of condominium units in the Project among themselves.[20] To recall, Malayan and St. Francis *(then ASB)* entered into the Joint Project Development Agreement *(JPDA)* dated November 9, 1995 to construct a thirty-six (36)-storey condominium [but originally a fifty (50)-storey-building] whereby the parties agreed (a) that Malayan would contribute a parcel of land, and ASB would defray the construction cost of the project, and (b) that they would allocate the net saleable area of the project, as return of their capital investment. In a Contract to Sell dated November 20, 1996, Malayan also agreed to sell the said land to ASB *(now St. Francis)* for a consideration of ₱640,847,928.48, but the latter was only able to pay ₱427,231,952.32. However, ASB was unable to completely perform its obligations under the JPDA and the Contract to Sell because it underwent corporate rehabilitation, and the Securities and Exchange Commission suspended, among other things, the performance of such

[20] Memorandum of Agreement dated April 30, 2002, Sec. 19.

obligations. Since ASB had pre-sold a number of condominium units, and in order to protect the interests of the buyers, to preserve its interest in the project, its goodwill and business reputation, Malayan proposed to complete the project subject to the terms and conditions of the MOA.

Under Section 5(a) of the MOA, Malayan undertook to construct, develop and complete the Project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 of the MOA, within two (2) years from (i) the date of effectivity of Malayan's obligations as provided in Section 21, or (ii) the date of approval of all financing/loan facilities from any financial or banking institution to fully finance the obligations of Malayan under the MOA, whichever of said dates shall come later; or within such extended period as may be agreed upon by the parties. Section 21 of the MOA provides that Malayan shall be bound by and perform its obligations, including the completion of the Project, only upon (i) fulfil1ment by St. Francis of all its obligations under Section 6, items (a), (b), (c) and (d),[21] and (ii) approval by the Insurance Commission of the MOA.

---

[21] Section 6. *Responsibilities of ASB* [now, St. Francis]. [St. Francis] undertakes to do the following obligations:

a. Within ninety (90) days from date hereof or within such extended period as may be agreed upon by the parties, obtain, whether on its own behalf or for the benefit of Malayan, from local or national government agencies (including, but not limited to, the Housing and Land Use Regulatory Board, the Securities and Exchange Commission, and the Bureau of Internal Revenue) or any other entity or person any and all permits, licenses, approvals or consents necessary to implement the transactions contemplated herein, including, but not limited to, the following final and executory approvals;

i. approval by the Securities and Exchange Commission of the transactions contemplated hereunder; and

ii. approval by the Housing and Land Use Regulatory Board of the transactions contemplated hereunder, including any changes or amendments to the Master Deed of Restrictions, License to Sell, or any other document relating to the Project as Malayan may deem necessary or appropriate and as Malayan shall relay to [St. Francis] prior to the date of signing hereof, such as the change of the name of the Project to "Malayan Tower" or any other name that Malayan

Section 5(a) of the MOA also states that that the project shall be deemed complete, and the obligation of Malayan fulfilled, if the construction and development of the Project is finished as certified by the architect of the project. Upon completion of the project, the general provision which governs the distribution and disposition of units is the first sentence of Section 4(a) of the MOA, to wit: "[a]s a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost." The second sentence[22] of Section 4(a) provides the specific details on the

---

may adopt, or the right of Malayan to convert the units to a condotel/ apartelle. For this purpose, Malayan shall grant [St. Francis] a special power of attorney to follow up the processing of said approval;

b. Upon terms and conditions acceptable to Malayan, (i) assign the construction contracts and the amount of ₱36,731,086 advanced to contractors of the Project set forth in Section 5 (g) to help the parties reduce the cash requirement to complete the Project, with the contractors' conformity and confirmation of the amount of their net advances from [St. Francis] as set forth in Section 5 (g), and/or (ii) obtain the renewal of expiring or expired construction contracts of these contractors;

c. Within thirty (30) days from date hereof, obtain from each contractor with a net claim against [St. Francis] as set forth in Section 5 (g) an irrevocable undertaking to execute the waiver of all its claims against the Project, upon payment by Malayan of its net claim. Such undertaking and waiver shall conform to the undertaking and waiver attached hereto as Schedule 7. [St. Francis] represents and warrant to Malayan that (a) the contractors listed in Section 5 (g) are the only contractors with claims against the Project and (b) their aggregate net claims do not exceed ₱12,712,954;

d. Within fifteen ( 15) days from procurement of all approvals mentioned in Section 6 (a) above, transfer to Malayan complete and unhampered possession of the Project and turn over and deliver to Malayan all architectural, engineering and other plans; records and other documents of the Project as set forth in Schedule 8 hereof;

x x x x x x x x x

[22] Section 4. *Distribution and Disposition of Units.* x x x As of the date of the execution hereof and on the basis of the total costs incurred to date in relation to the Remaining Construction Cost (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining construction cost exceeds the Remaining Construction Cost): x x x

*pro rata* sharing of units to which the parties are entitled based on the RCC in relation to total costs incurred as of the date of the execution of the MOA dated April 30, 2002. It also states, however, that entitlement to certain units are subject to adjustments in the event that the ARCC exceeds the RCC, and Malayan pays for such excess.

Clearly, the parties foresaw that Malayan may incur additional cost and expenses in excess of the Remaining Construction Cost *(RCC)* of ₱452,424,849.00 which amount St. Francis represented and warranted that Malayan would have to spend to complete the project. Section 9(b)[23] of the MOA thus adds that, in such event, Malayan shall be entitled to such net saleable area as indicated in Schedule 4 that corresponds to the increase in remaining construction costs, while St. Francis shall be entitled to such net saleable area, if any, remaining in the said Schedule 4. As admitted by the parties in the Amended Terms of Reference, the net saleable area included in Schedule 4 *("Reserved Units")* originally covered fifty-three (53) units (which was reduced to thirty-nine [39] units after reconfiguration) with thirty-eight (38) parking spaces, and the aggregate monetary value of said units is ₱175,856,323.05.

In determining the entitlement of the parties to the reserved units in Schedule 4, Malayan insists that the ARCC should include all its capital contributions to complete the project, including financial costs which are not directly related to the construction

---

[23] Section 9. *Remaining Construction Cost.* (a) [St. Francis] represents and warrant to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849[.00]) (the "Remaining Construction Cost") as set forth in [St. Francis'] Construction Budget Report attached hereto and made integral part hereof as Schedule 9, x x x.

(b) Malayan shall pay for any additional costs and expenses that may be incurred in excess or the Remaining Construction Cost. In such event, it shall be entitled to such net saleable area as indicated in Schedule 4 that corresponds to the increase in remaining construction costs. [St. Frnncis] shall be entitled to such net saleable area, if any, remaining in the aforesaid Schedule 4.

of the building. It argues that the MOA is replete with provisions recognizing the parties' intent to include in the ARCC their respective capital contributions or investment.

Malayan's argument fails to persuade.

The term ARCC should only be construed in light of its plain meaning which is the actual expenditures necessary to complete the project, and it is not equivalent to the term "investment" under the MOA.

As stated in the MOA, the investment of Malayan is composed of (1) the amount necessary to complete the project, and (2) the following amounts: (a) ₱65,804,381, representing Malayan's payment on behalf of ASB *(now St. Francis)* of the principal amount of the loan obtained by ASB from the RCBC to finance the project; and (b) ₱38,176,725, representing Malayan's payment on behalf of ASB of the outstanding obligations to project contractors as of the signing of the MOA.[24] On the other hand, the investment of St. Francis is broadly defined as the ASB's invested amount equivalent to its entitlement to the net saleable area of the Building under Section 4 of the MOA, including ASB's interest as buyer under the Contract to Sell.[25] Hence, the Court holds that the ARCC, which petiains only to the amount necessary to complete the project, can be considered as part of the capital investment, but they are not synonymous.

Likewise negating Malayan's argument that all its contribution to complete the project should be included in the ARCC is the restrictive construction industry definition of "construction cost", to wit: the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.[26]

---

[24] Memorandum of Agreement dated April 30, 2002, Sec. 2.

[25] *Id.* Sec. 3.

[26] Cyril M. Harris, McGraw-Hill, *Dictionary of Architecture and Construction* (Fourth Edition), p. 251.

As to the computation of the ARCC, the Court agrees with the CA that the CIAC erred in relying mainly on Exhibit *"C-3,"* which is a mere summary or tabulation of the cost to complete the project as of August 10, 2006, and that Exhibit *"R-24"* (a 26-page Cost to Complete as of October 2008) and Exhibit *"R-48-series"* (consisting of about 2,230 pages construction costs computation, receipts, vouchers, checks and other documents) should also be considered in determining the ARCC. After a careful review of the records, the Court finds partial merit in the claim of St. Francis that certain items in the computations are unsubstantiated by evidence, while the other costs should either be included or excluded in the ARCC for reasons that will be explained below. Hence, the CA's own computation of the ARCC based on Exhibit *"R-48-series"* in the total amount of ₱554,583.160.20 (including 1/11% Input VAT and 2% withholding tax) should be modified in order to arrive at the net ARCC of **₱505,391,573.63,** thus:

**Construction Cost as per receipts** (Exhibit *"R-48-series"*[27])

(with 1/11% Input VAT and 2% withholding tax)- **₱554,583,160.20**

**Total Inclusion:** ₱8,282,974.82

Award to Total Ventures, Inc.

(Prolongation costs and extended Overhead)– + 8,282,974.82

**Total ARCC:** ₱554,583, 160.20+8,282,974.82= **₱562,866,135.02**
(Construction Costs as per receipts+ Inclusion)

**Total Deductions:** ₱41,705,696.66

| | | |
|---|---|---|
| Interest expense paid by Malayan to RCBC | – | ₱39,348,659.88 |
| Change orders not due to Reconfiguration | – | 971,796.29 |
| Contingencies | – | 631,154.39 |
| Interior Design Works | – | + 754,086.10 |
| | | **₱41,705,696.66** |

**Total Exclusions:** ₱15,768,864.73
(Unsubstantiated Costs)

[27] *Rollo* (G.R. Nos. 198916-17). Vols. II & IV, pp. 1370-3600.

| | | |
|---|---|---|
| Item 1.0[28] | – | ₱ 9,297,947.22 |
| Items 5.3 and 5.4[29] | – | 530,563.65 |
| Items 5.3 and 5.4 | – | 725,877.62 |
| Item 5.7.1[30] | – | 50,710.61 |
| Item 6.2.25[31] | – | 194,171.00 |
| Item 6.11[32] | – | 3,499.64 |
| Item 6.11 | – | 1,360.00 |
| Item 6.12.3[33] | – | 2,397,047.89[34] |
| Item F3[35] | – | 368,397.52 |
| Item F3 | – | 448,534.59 |
| Item F3 | – | 634,232.26 |
| Professional Fees C& D[36] | – | 427,500.00 |
| Professional Fees N[37] | – | +79,022.73 |
| | | **₱15,768,864.73** |

| | |
|---|---|
| (Total Deductions) | ₱41,705,696.66 |
| (Total Exclusions) | +15,768,864.73 |
| | ₱57,474,561.39 |

Total ARCC – Total Deductions & Exclusions = **Net ARCC: ₱505,391,573.63**

₱562,866,135.02 - ₱57,474,561.39 = ₱ 505,391,573.63

### *III. Input VAT*

St. Francis contends that Input VAT should not be treated as part of construction cost, because it is not part of the costs

---

[28] *Id*. at 1371 (G.R. Nos. 198916-17), Vol. II, Exhibit "*R-48-A-series*."

[29] *Id*. at 1661, *Id.*, Exhibit "*R-48-E-4-series*."

[30] *Id*. at 1787, *Id.*, Exhibit "*R-48-E-20-series*."

[31] *Id*. at 2349, *Id.*, Exhibit "*R-48-F-27-series*."

[32] *Id*. at 2477, *Id.*, Exhibit "*R-48-F-43-series*."

[33] *Id*. at 2520, *Id.*, Exhibit "*R-48-F-47-series*."

[34] ₱5,100,000.00 [Item 6.12.3 per CA] - ₱2,702,952.11 [Item 6.12.3 per Exhibit "*R-48-F-47-series*."] = ₱2,397,047.89

[35] *Rollo* (G.R. Nos. 198916-17), p. 3523, Vol. IV, Exhibit "*R-48-U-series*."

[36] *Id*. at 3169, *Id*., Exhibit "*R-48-H-series*."

[37] *Id*. at 3265, *Id*., Exhibit "*R-48-11-6-series*."

of goods and services purchased or engaged under Section 110[38] of the National Internal Revenue Code *(NIRC).* According to

---

[38] SEC. 110. *Tax Credits.* –

*A. Creditable Input Tax.* -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

St. Francis, VAT Ruling No. 053-94, February 9, 1994, states that VAT paid by a VAT-registered person on his purchases *(or input tax)* is an asset account in the Balance Sheet and not to be treated as an expense, unless he is exempt from VAT in which case the VAT paid would form part of the cost to acquire what was purchased. In fact, per Malayan's own documentary evidence, cash vouchers in Exhibit *"R-48- series,"* input VAT is indicated as an account separate from the actual cost of services or materials. Also, in Malayan's audited financial statements, input VAT is treated as a separate item and was, in fact, claimed as an asset under the heading "Other Assets."

St. Francis further points out that Malayan's counsel admitted that input VAT is not part of cost when he stated that VAT and interest expense are actually financial cost and part of its capital contribution in the construction, but, strictly speaking, not directly related construction cost. St. Francis claims that even from an accounting standpoint, input tax is not entered into the books as part of cost. While contract prices for contractors or suppliers are VAT inclusive, it does not mean that input VAT is considered

---

The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

*(B) Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

*(C) Determination of Creditable Input Tax.*- The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments the Bureau of Customs.

part of cost; input VAT is treated as account in a different account, either under "Other assets" or "Input Tax", which is an asset account. Besides, the input VAT claimed by Malayan as part of its construction cost in the usual course of business as a VAT-able entity is offset or credited against output VAT to determine the net VAT due or payable to the government. Since Malayan also has output VAT from its sales of condo units in the project and from sales of insurance policies, it should be able to credit such input VAT and not charge it as part of the construction cost.

St. Francis finally notes that Malayan admitted that it can apply for refund or issuance of tax credit for excess input tax, and will thus benefit twice from charging input VAT as part of the construction cost. Since input VAT had already been claimed by Malayan, and its audited financial statements show the offsetting of input VAT against output VAT, then justice and equity dictate that it should not be allowed to claim it as part or the ARCC.

The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, ARCC refers to the actual expenditures made by Malayan to complete the project. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order to complete the project. Moreover, that the burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record[39] which separately indicated the

---

[39] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600, Exhibit *"R-48-series."*

VAT component in accordance with Section 113(B)[40] of the Tax Code.[41]

Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against its output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could

---

[40] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*

x x x x x x x x x

*(B) Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

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

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

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

"(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *"Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. x x x

[41] As amended by R.A. 9337 (Effective July 1, 2005).

mean illegally or unlawfully.[42] In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of the goods, properties and services it had procured to complete the project.

At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and transfer of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to the buyer is credited against the buyer's output taxes when it in turn sells the taxable goods, properties or services.[43]

### *IV. Comprehensive All Risk Insurance (CARI)*

St. Francis claims that the CARI should be disallowed from being part of the ARCC because there is no proof of expense on the part of Malayan, and only official receipts were presented. However, the first official receipt in the amount of ₱2,814,672.81 is not even readable, while in the second receipt, the description of the contract for the CARI appears to be a different project. Considering that the assured in the receipts is not just Malayan but jointly with LANDEV *(project manager),* St. Francis adds that Malayan must prove that it actually paid for this expense.

It bears stressing that both the CIAC and the CA agreed that the CARI should be allowed as part of the ARCC, but differed as to the amount. Due to St. Francis' admission that it would allow inclusion of ₱l ,000,000.00, and considering that no basis

---

[42] *University of the Philippines v. Philab Industries, Inc.,* 482 Phil. 693, 709 (2004).

[43] National Internal Revenue Code, Secs. 105 and 110(A).

has been suggested on how the said amount was arrived at, the CIAC decided to split the amount contested (₱2,814,678.80, excluding premium for renewals, per Malayan) into equal shares, and allowed the CARI in the amount of ₱1,407,336.40 as part of the ARCC. On the other hand, the CA allowed CAR in the amount of ₱2,168,035.66 as part of ARCC, after reviewing the official receipts[44] issued by Tokio Marine Insurance Co., and finding that the total amount of the CARI should be ₱4,336,071.32 which should be split between Malayan and St. Francis.

The Courts holds that CARI in the amount of ₱4,361,291.34 is supported by official receipts;[45] hence, such amount should be allowed to remain in the ARCC. Although the official receipts of the CARI appear to have been issued in the name of Malayan and/or LANDEV, the minutes of the December 20, 2002 Bids and Awards Committee Meeting, of which St. Francis' President Luke Roxas was a member, proves that it was unanimously agreed upon that the CARl would be secured directly by the owner, Malayan. The official receipts and the said minutes prove that the premium of the policy, as well as the renewals thereof, were shouldered by Malayan as the owner of the project. Against the said substantial evidence of Malayan, the CA and the CIAC have no basis in ruling why the CARI should be split between Malayan and St. Francis. As to the conflict between the CARI premium payments shown in Exhibit *"C-3"* (Cost to Complete as of August 10, 2006) in the total amount of ₱4,006,634.85 and Exhibit *"R-48- M-series"* (Item 5.0 Project Insurance, Tokio Marine Malayan Insurance Co. Inc.) in the total amount of ₱4,361,291.34, the latter should prevail as it is supported by official receipts.[46]

---

[44] *Rollo,* (G.R. Nos. 198916-17), Vol. II, pp. 2815-2821.

[45] *Id.,* Vol. IV, pp. 3327-3333.

[46] *Id.* at 3329-3333.

### *V. Allocation of Reserved Units*

St. Francis asserts that the correct ARCC supported by receipts is only ₱514,179,217.94,[47] and after making all the necessary deductions, the excess ARCC over the warranted RCC (₱452,424,849.00] would only be around ₱16,446,014.66, thus entitling it to the value of the reserved units of around ₱159,410,310.39, as well as the income therefrom. On the other hand, Malayan insists that St. Francis would no longer be entitled to any reserved units, and it would still be liable for ₱19,038,339.91, as the ARCC and the RCC exceeded the aggregate value of the reserved and the total aggregate value of the reserved units by such amount.

The CIAC held that the ARCC based on Exhibit *"C-3"* is ₱614,593,565.96, and that after deducting the total disallowances of ₱52,864,385.00, as well as the amount of the RCC, the excess ARCC will be ₱109,304,331.96 which is equivalent to Malayan's 62.2% share in the total aggregate value of the reserved units (₱175,856,325.05). Meanwhile, the remaining 37.8% is the proportionate share of St. Francis in the said units.

Modifying the ruling of the CIAC, the CA ruled that based on Exhibit *"C-3", "Exhibit R-24"* and Exhibit *"R-48-series,"* the total ARCC is ₱615,880,672.47. After excluding the deductions in the total amount of ₱15,135,166.51 and the amount of the RCC, the excess ARCC will be ₱148,320,656.96 which is equal to Malayan's 84% share in the total aggregate value of the reserved units. The remaining 16% is the proportionate share of St. Francis in the said units.

After a circumspect review of the records, the Court finds that the **30%** of the reserved units should be allocated to Malayan, while **70%** should be allocated to St. Francis. Below is the computation of the parties' proportionate share in the said units:

₱505,391,573.63 [Net ARCC] - ₱452,424,849.00 [RCC] = ₱52,966,724.63 [Excess ARCC]

---

[47] Exhibit "C-50".

₱52,966,724.63 (Excess ARCC]/₱175,856,323.05 [Total Aggregate Value of Reserved Units]= .3011 or **30% - share of Malayan**

₱122,889,598.42/₱175,856,323.05 = .6988 or **70%- share of St. Francis**.

***Prolongation Costs and Extended Overhead***

The CIAC held that Prolongation Costs and Extended Overhead in the amount of ₱6,000,000.00 should be excluded as part of the ARCC because it would be unfair and unjust for Malayan to pass on its liability to St. Francis after having been found responsible for the delay. The CIAC pointed out that the resolution of this issue hinges upon whose fault the delay in the construction that gave rise to prolongation costs may be attributed to, and this was resolved in CIAC Case No 27-2007 entitled "Total Ventures and Project, Inc. *vs*. Malayan Insurance Company, Inc." where the arbitral tribunal awarded in favor of claimant TVI the sum of ₱7,743,278.89 to compensate for the delay in the completion of construction which has been caused essentially by Malayan.

On the contrary, the CA held that it is but proper to include in the ARCC the amount of ₱21,948,852.39 which Malayan had paid to Total Ventures, Inc. *(TVI)* for the settlement in the CIAC Case No. 27-2007.

St. Francis points out that without consideration of its arguments and contrary to CIAC's finding, the CA held that Malayan had paid TVI ₱21,948,852.39 which should be included in the ARCC. St. Francis states that, assuming *arguendo,* that such settlement in the arbitration case can be considered part of the ARCC, the entire amount thereof cannot be included because the combined total amount of the award of prolongation costs and extended overhead (₱7,743,278.89), and the interest (₱1,430,127.50) is only (₱9,173,405.94). It adds that it is very clear in the decision of the arbitral tribunal that the causes for the delay of TVI that warranted the grant of overhead expenses are actually attributable to Malayan, *to wit:*

Based on the foregoing documentary evidence and the testimony of the witnesses, delays in the project implementation was mainly

attributed to the reconfiguration of the room layout of the building at Discovery side and delay in the award by MICO [Malayan] of the subcontract packages for other trade disciplines plus, the delayed delivery of material which had a domino effect on the work of the succeeding packages, and eventually to the overall project completion date which had to be extended to August 31, 2005.[48]

The CA grossly erred in ruling that the full amount of ₱21,948,852.39 paid by Malayan to TVI should be included in the ARCC. A careful review of the decision of the arbitral tribunal in CIAC Case No. 27-2007 shows that such full amount consists of net amount due (₱20,518,725.94) to TVI after offsetting its various claims against the counterclaims of Malayan, plus the accrued interest of ₱1,430,127.05.[49] Based on the said decision and the amount which St. Francis itself has conceded it may be held liable for, the Court holds that the prolongation costs and extended overhead for the period of January 2005 to August 2005 (₱6,313,846.43) and September 1, 2005 to August 31, 2005 (₱1,429,432.46) in the total amount ₱7,743,278.89,[50] as well as the accrued interest in the amount of ₱539,695.93,[51] or a total amount of ₱8,282,974.82, should be included as part of the ARCC.

The Court agrees with Malayan that the cause of the delay in the completion of TVI's construction works was the

---

[48] *Rollo* (G.R. Nos. 198916-17), p. 917, Vol. I. CIAC Decision in Case 27-2007, p. 64 of 68.

[49] *Id.* at 920-921; *Id.* at 67 of 68.

[50] *Id.* at 919; *Id.* at 66 of 68. Accordingly. The amount of **Php 20,518,725.34** adjudged in TVI's favor shall earn interest based on the 30-day regular loan rate of the Land Bank of the Philippines prevailing on the **due date** until the filing of this case with the CIAC.

As of October 30, 2006, the prevailing Prime Lending Rate as certified by Land Bank of the Philippines was 8.00%, p.a. Time lapsed from October 31, 2006 (date of certification) to September 14, 2007 (filing of case with CIAC) is 318 days. TVI is, therefore, entitled to accrued interest computed as follows: **Php 20,518,725.34** (principal amount) x **.08** (interest rate) x **318/365** (days elapsed) or **Php 1,430,127.05**. (Emphasis in the original)

[51] (₱7,743,278.89x.08x318/365)

reconfiguration of the room layout of the building along the side facing Discovery Suites hotel. Such delay was, in turn, caused by St. Francis deviation from the original April 12, 1996 floor plans for the 9th to 31st floors of the project, which resulted in units that were more typical of a high-density, low-cost condominium project. Indeed, Malayan had to reconfigure the said layout of several units that St. Francis had constructed as they were smaller and narrower than those provided in the original floor plans, and in order to meet St. Francis' commitment to the buyers of pre-sold units to create a prestigious building and collaborative masterpiece that only the best in interior design, landscape planning and architecture can truly offer, as well as to avoid possible liability under Section 19[52] of the Subdivision and Condominium Buyers' Protective Decree *(Presidential Decree No. 957).*

The Court will now discuss jointly the first three interrelated Issues raised by Malayan.

**A. Whether St. Francis had never disputed and therefore admitted that Malayan had incurred the ARCC.**

**B. Whether the CA erred in allowing St. Francis' to belatedly change its theory in its Draft Decision and in its Appeal.**

**C. Whether the CA erred in disregarding the uncontroverted testimonial evidence, and focusing solely on documentary evidence.**

---

[52] Section 19. *Advertisements.* Advertisements that may be made by the owner or developer through newspaper, radio, television, leaflets, circulars or any other form about the subdivision or the condominium or its operations or activities must reflect the real facts and must be presented in such manner that will not tend to mislead or deceive the public.

The owner or developer shall answerable and liable for the facilities, improvements, infrastructures or other forms of development represented or promised in brochures, advertisements and other sales propaganda disseminated by the owner or developer or his agents and the same shall form part of the sales warranties enforceable against said owner or developer, jointly and severally. Failure to comply with these warranties shall also be punishable in accordance with the penalties provided for in this Decree.

According to Malayan, the CA overlooked the fact that St. Francis objected only to the perceived impropriety of including certain costs in the ARCC. That Malayan incurred these costs was never in issue during the arbitral proceedings. In view of the rule that all facts not in issue are admitted, and that all facts judicially admitted do not require proof, Malayan claims that it should not bear the burden to prove that it had actually incurred its ARCC.

Malayan also notes that St. Francis' CIAC complaint contained no allegation that Malayan had not actually incurred the costs in its ARCC, nor was there any claim that specific costs items in the ARCC lacked evidentiary basis, or were otherwise fictitious or fabricated. Malayan argues that if its alleged failure to substantiate the ARCC was enough basis to question costs included therein, it follows that St. Francis would already have disputed in its complaint the entire amount of the ARCC. Yet, St. Francis only chose to object to selected items in the ARCC, and not because of the alleged lack of substantiation.

Malayan adds that from the time St. Francis filed its complaint, up to the conclusion of trial, it had the same theory, *i.e.,* although Malayan had indeed spent for its ARCC, some costs items ought to be excluded as they could not be considered part of the ARCC. It was only belatedly in its Draft Decision and its Petition before the CA that St. Francis argued for the first time that new cost items should also be deducted from the ARCC because they were allegedly unsubstantiated or not fully supported by official receipts. In light of the rule that a party cannot change his theory on appeal when a party adopts a certain theory in the court below, Malayan faults the CA for excluding new cost items from the ARCC due to lack of substantiation. Besides, Malayan claims that its entire ARCC as of February 29, 2009 was expressly affirmed by its witnesses who are competent to testify due to their involvement in the preparation and monitoring of the project's budget.

Stating that it did not have the burden of proving that it incurred the costs in its ARCC because this was never in issue, Malayan concludes that the CA should have held St. Francis to its original

theory that Malayan had actually incurred all the items in its ARCC of ₱647,319,513.96, instead of examining each item included therein and accepting only ₱615,880,672.47 as supported by documentary evidence. Finally, Malayan insists that there can be no dispute that it incurred the ARCC of ₱647,319,513.96 based on the unrebutted testimony of its witnesses and the voluminous documents it introduced at trial.

Malayan's contentions are misplaced.

Contrary to the claim that St. Francis admitted that Malayan had incurred the ARCC of ₱647,319,513.96, the allegations in St. Francis complaint and the Amended Terms of Reference would show that the substantiation of the cost items included in the ARCC and the exact amount thereof are the core issues of the construction arbitration before the CIAC.

For one, the contention that St. Francis' complaint contained no allegation that Malayan had not actually incurred the costs in its ARCC, nor was there any claim that specific costs items in the ARCC lacked evidentiary basis, is belied by the following allegations in same complaint:

> 2.9 Sometime in August of 2006, [Malayan] presented a cost to complete construction of the Project in the amount of SIX HUNDRED FOURTEEN MILLION FIVE HUNDRED NINETY THREE THOUSAND FIVE HUNDRED SIXTY FIVE PESOS and 96/100 (₱614,593,565.96). **Said cost to complete however was a mere tabulation with a listing of items and appurtenant costs.There was no independent proof or basis as well as evidence that claimant incurred these costs, much less, if these costs conform with the actual construction cost as the same is understood under the MOA.** xxx[53]

For another, one of the admitted facts in the Amended Terms of Reference states that "[d]espite the completion of the Project and the turnover of the units to [St. Francis], [Malayan], and other buyers of units, the issue of actual cost of construction has not been resolved to the mutual satisfaction of the parties."[54]

---

[53] *Rollo* (G.R. Nos. 198920-21), p. 263. (Emphasis added).

[54] *Rollo* (G.R. Nos. 198916-17), Vol. 1, p. 179.

Not to mention, one of the issues raised before the CIAC is "[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?"[55] Clearly, there is no merit in the claim that St. Francis admitted that Malayan had incurred the ARCC of ₱647,319,513.96 as of October 2008. It can be gathered from the complaint that, as early as August 2006 when the ARCC was just ₱614,593,565.96, St. Francis already disputed such amount for lack of independent proof or evidence that Malayan incurred these costs.

Anent Malayan's claim that St. Francis argued belatedly in its Draft Decision and its petition before the CA that new cost items should also be deducted from the ARCC because they were allegedly unsubstantiated or not fully supported by official receipts, suffice it to state that whether such cost items should be excluded from the ARCC is impliedly included in the issue of"[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?"[56]

Moreover, in an action arising out of cost overruns on a construction project, the builder who has exclusive control of the project and is in a better position to know what other factors, if any, caused the increases, has the burden of segregating the overruns attributable to its own conduct from overruns due to other causes.[57] As the co-owner and developer who assumed the general supervision, management and control over the project, and the one in possession of all the checks, vouchers, official receipts and other relevant documents, Malayan bears the burden of proving that it incurred ARCC in excess of the RCC and the total aggregate value of the reserved units, in which case St. Francis would no longer be entitled to a proportionate share in the reserved units pursuant to the MOA.

---

[55] *Id*. at 180.

[56] *Id.*

[57] 13 Am Jur 2d § 122, Building, Etc. Contracts.

In view of the foregoing discussion, the Court finds no merit in Malayan's contentions (1) that it did not have the burden of proving that it incurred the costs in its ARCC because this was never in issue; and (2) that there can be no dispute that it had incurred the ARCC of ₱647,319,513.96 based on the unrebutted testimony of its witnesses and the voluminous documents it introduced at trial.

**D. Erroneous Cost Exclusions from the ARCC**

**D.l. Change Orders due to Reconfiguration**

The CIAC held that costs of reconfiguration should be allowed to remain as part of the ARCC on account of the greater savings generated. It found that Malayan has sufficiently established that the reconfiguration did not result in additional costs, and net savings were realized. Since St. Francis only concern was to minimize costs and maximize savings, there is no longer any basis to object to the reconfiguration and the change order that were approved as a results thereof.

In contrast, the CA ruled that the CIAC erred in allowing the increased cost of ₱7,434,129.85 to be included in the ARCC because it is immaterial whether there were net savings generated from the reconfiguration, and the fact remains that there was an increase in the budgeted construction cost, which Malayan alone should bear.

Finding substantial evidence on record to support the CIAC ruling, the Court reverses the CA ruling and upholds the CIAC that the increased costs of ₱7,434,129.52 should be included in the ARCC. The Court sustains the CIAC's observation that although such reconfiguration was not really necessary for the completion of the project and was undertaken only to make the units more saleable, St. Francis had consented thereto on the condition that it would result in savings rather than additional costs.[58] No persuasive reason was shown to disturb the CIAC finding that despite the increased costs of ₱7,434,129.52 as claimed by St. Francis, and even including the consultants'

---

[58] *Rollo* (G.R. Nos. 198920-21), p. 605.

fees in the aggregate amount of ₱3,081,725.00, the savings amounting to ₱14,096,239.07 due to reconfiguration, would still be in excess of the costs of additive change orders.[59] In arriving at such computation, the CIAC went over the disputed change orders due to reconfiguration, and proceeded to calculate whether the cost of the additive works exceeded the savings realized from the deductive works. Notably, no similar effort was exerted by the CA in arriving at its ruling. Without stating any reason, the CA reversed the CIAC ruling that net savings were generated on account of change orders due to reconfiguration,

**D.2. Change Order not due to Reconfiguration**

With respect to change orders not due to reconfiguration amounting to ₱971,796.29, the CIAC held that such costs should be excluded from the computation of the ARCC because they were clearly not within the scope of the original work covered by the MOA, but were plainly additive works ordered by Malayan to improve or enhance the project. It also found no legal or equitable reason to allow Malayan to pass on the costs of such unnecessary improvements or enhancements to St. Francis.

The CA deemed it unnecessary to disturb the CIAC's findings on the change of orders not due to reconfiguration, as the latter had extensively discussed the issue. According to the CA, the CIAC correctly ruled that the change orders not due to reconfiguration cannot be considered as part of the ARCC as these were not within the scope of the work agreed upon by the parties in the MOA. It also noted that it is clear from Section 5 of the MOA that Malayan shall undertake, among other things, to construct, develop and complete the Project based on the general specifications already agreed upon by the parties and as set forth in the Schedule 6 of the MOA, with full powers to enter into agreement with contractors, subcontractors, and suppliers for the completion of the various phases of work. It concluded that when Malayan undertook additional works, improvements or enhancements not within the specifications agreed upon, it presupposes that it shall bear the costs thereof.

---

[59] *Id.* at 608.

Since the findings of the CIAC and the CA on this issue are consistent, the Court perceives no cogent reason to overturn such findings which are supported by substantial evidence. Besides, the Court takes issue with Malayan's claim that the CA gravely erred in rigidly applying the specifications in Schedule 6 of the MOA, considering that they were "general" in character and "for reference" purposes only. It is noteworthy that Schedule 6[60] not only provides for the Schedule of Finishes and Materials of ASB Malayan Tower as of 26 October 2000, covering Exterior Works, Interior Works, Elevators, Intercom, Fire Alarm System, Standby Generator Set, Lightning Protection and Pumps, among other things, but also includes the project floor plans from Basement 2 to 6, and levels 4, 5, 7 to 12, 14 to 18, 20, 22 to 31, 33 to 35, penthouse and upper penthouse. When a building contract refers to the plans and specifications and so makes them a part of itself, the contract is to be construed as to its terms and scope together with the plans and specifications.[61] When the plans and specifications are by express terms made part of the contract, the terms of the plans and specifications will control with the same force as if they were physically incorporated in the very contract itself.[62] Malayan cannot, therefore, brush aside Schedule 6 as "general" and "for reference only" matters in the interpretation of the MOA.

As to the costs incurred due to the supposed reasonable deviations from specifications in the exercise of its sound discretion as the developer, Malayan would do well to bear in mind that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[63] Under Section 5 of the MOA, Malayan undertook to construct, develop and complete the project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 thereof. As duly pointed out

---

[60] *Rollo* (G.R. Nos. 198916-17), Vol. 1, pp. 212-237.

[61] 13 Am Jur 2 d § 13, Building, Etc. Contracts.

[62] *Id.*

[63] New Civil Code, Art. 1370.

by the ClAC, since the parties to the MOA had agreed on the specifications that will control the construction and completion of the project, anything that alters or adds to these specifications which adds to the costs, should not be part of the ARCC.

**D.3. Half of Costs for Narra Parquet Works**

The CIAC allowed only half of the increased flooring costs [₱4,982,798.44] in the amount of ₱2,491,399.22, plus the original budgeted expense for this item in the amount of ₱12,770,000.00, or a total amount of ₱15,261,399.22, as part of the ARCC. According to the CIAC, since the cause of change in flooring material and the increased cost was a *force majeure* (government log ban) for which no one can be blamed, it is but fair that both parties will equally share the increased cost.

The CA ruled that the CIAC did not err in dividing the increased cost between the parties. It stressed that the dispute pertains to the proportionate entitlement of the parties to the reserved units after determining the actual construction cost. Thus, both parties should share in the reserved units, as it is but fair that the increased cost should also be equally divided between them, and half of the increased amount should be included in the computation of the ARCC.

Although the findings of the CA and the CIAC on this issue are consistent, the Court finds their reasoning contrary to the MOA. The construction cost increase due to the change from Narra parquet to Kendall laminated flooring is undisputedly due to the government logging ban which is a *force majeure.* However, the equal sharing of such cost increase is contrary to the MOA which provides for the proportionate entitlement of the parties to the reserved units, depending on the excess ARCC over the RCC and the total aggregate value of the reserved units. In addition, such increased cost due *to force majeure* falls under the category of "Contingencies" under Schedule 9 of the MOA, which term is defined as an amount of money, included in the budget for building construction, that is uncommitted for any purpose, intended to cover the cost of unforeseen factors related to the construction which are not

specifically addressed in the budget.[64] The Court therefore holds that the entire increased cost of ₱4,982,798.44 due to the unforeseen necessity of change in flooring materials, should be included in the computation of the ARCC.

**D.4. Half of Costs for CARI**

As discussed above, the CARI in the amount of ₱4,361,291.34[65] is supported by official receipts; hence, such amount should be allowed to remain in the ARCC. Although the official receipts of the CARI appear to have been issued in the name of Malayan and/or LANDEV, the minutes of the December 20, 2002 Bids and Awards Committee Meeting, of which St. Francis' President Luke Roxas was a member, proves that it was unanimously agreed upon that the CARI would be secured directly by the owner, Malayan. The official receipts and the said minutes prove that the premium of the policy, as well as the renewals thereof, were shouldered by Malayan as the owner of the project. Against the said substantial evidence of Malayan, the CA and CIAC have no basis in ruling why the CARI should be split equally between Malayan and St. Francis.

**D.5. Half of Costs for Interior Design Works**

In resolving this issue, the CIAC noted that it is crucial to determine whether the disputed amount was spent to improve the original design or to comply with St. Francis' commitments to the buyers. According to the CIAC, *force majeure* (government log ban) also justified the change of flooring materials from wood parquet to homogenous tiles and marble flooring. However, the difficulty in resolving this issue is that the increased cost is not only because of the change of flooring materials, but also due to the change of specifications and the inclusion of gym equipment. Thus, it is impossible to separate the increased cost arising from flooring change and those from causes other

---

[64] Cyril M. Harris, McGraw-Hill, *Dictionary of Architecture and Construction* (Fourth Edition), p. 251.

[65] *Rollo* (G.R. Nos. 198916-17), Vol. IV, pp. 3329-3333.

than gym equipment which is worth ₱962,250.00 and the underlay of plywood and rubber pads worth ₱96,967.73.

The CIAC noted that the budgeted amount for this item of ₱5,600,000.00 made by St. Francis was increased to ₱9,000,000.00 in Malayan's budget, and that the difference of ₱3,400,000.00 reflects the increase from unspecified causes such as supervening price increase. It added that both parties agreed on the increase due to cost of glass doors, hardware and plumbing fixtures amounting to ₱2,100,415.00. It was convinced that what is being contested by St. Francis is the increase in the actual cost (₱l4,150,324.73) *vis-a-vis* the Effective Budget for Interior Design Works of ₱11,100,415.00 or a net increase of ₱3,049,909.73.

In view of the above stated difficulty in resolving this issue, the CIAC held that the total increase of ₱3,049,909.73 as cost of interior design works should be equally shared by both parties (₱1,524,954.86 each), as well as the cost of the gym equipment (₱962,250.00) and the underlay of plywood and rubber pads (₱96,967.73), both amounting to ₱l,059,217.73. In sum, it allowed only ₱2,054,563.73 or half of the total cost increase (₱4,109,127.46) of such works to be included in the ARCC.

Upon review of the records under Exhibit *"R-48-series,"* the CA found that the official receipts show that the total payment due was ₱l2,642,152.52. It agreed with the CIAC that the increased cost for this item should be divided equally between the parties, but reduced the amount to ₱1,508,172.21[66] (or ₱754,086.10 each), instead of ₱3,049,909.73. The CA did not also disturb the CIAC's ruling on the disallowance of one-half of the cost of gym equipment and the underlay of plywood, and rubber pads. Having noted a discrepancy in the total amount of ₱962,250.00 stated in Exhibit *"C-3"* [Cost to Complete as of 10 August 2006], the adjusted contract price of ₱987,250.00, and the official receipts showing the total payment of

---

[66] ₱14,150,324.73 (actual cost)- ₱12,642,152.52 (total payment) = ₱1,508,172.21

₱978,275.01, the CA determined that the share of each of the parties should be ₱493,625.00.

Malayan claims that no explanation was given why the costs for interior design works had to be divided equally between the parties. In any event, the said works were awarded in accordance with the MOA and St. Francis' original marketing representations to the buyers of the pre-sold units, and they were proper and necessary for the completion of the project. As regards the costs incurred for the gym equipment and the underlay of plywood and rubber pads, they should be included in full in the ARCC because: (1) Section 6 of the MOA provides that the project must have a "Gym/Lounge/Children's Play Area"; (2) the general specifications of the project lists as one of the amenities a gym with equipment; and (3) St. Francis included such amenities in the marketing brochures and fliers it gave to buyers of the pre-sold units.

The Court agrees with the CA and the CIAC rulings that the costs for interior design works should be included in the computation of the ARCC, and that what is being contested is whether the net increase of ₱3,049,909.73 from the original budget of ₱11,100,415.00. As correctly found by the CA based on the official receipts, the net increase should only be ₱1,508,172.21. The Court also sustains the CA that such increase should be equally divided between the parties (₱754,086.10 each) due to the impossibility of separating the increased cost arising from flooring change and those from causes (change of specifications) other than gym equipment and the underlay of plywood and rubber pads.

However, there being no valid reason to extend such equal sharing of costs with respect to the gym items, the Court reverses the CA and the CIAC in ruling that costs of the gym equipment (₱962,250.00) and the underlay of plywood and rubber (₱96,967.73) amounting to ₱1,059,217.73 should be equally shared by the parties. The Court, thus, holds that the full amount thereof should be included in the computation of the ARCC.

**D.6. Contingency Costs**

The CIAC disallowed the amount of ₱2,000,000.00 in contingency costs to be included in the ARCC as they are not directly related to the completion of the project. The CIAC noted that what was included in the ARCC is the amount of ₱631,154.39 as payment for professional services and various expenses connected with the claim for damages to the car that was hit by falling construction debris, but Malayan included the amount of ₱2,000,000.00 in the ARCC. It added that Malayan, being insured under the CARI, should assert its claim against the insurance company. If Malayan failed to do so, or if it was able to recover less than what it had claimed, it would be unfair to pass on *(to St. Francis)* the amount it failed to claim by adding it as part of the ARCC.

The CA upheld the CIAC's ruling that contingency costs in the amount of ₱631,154.39 should not be passed on to St. Francis, considering that what was paid as damages and expenses was a consequence of an incident that occurred when a falling debris hit the Volvo car owned by Celestra. The CA noted that Malayan should assert its claim against the insurer to recover whatever damages it incurred in the course of the construction project. It added that legal fees paid to lawyers who defended Malayan against the claim of one Tan-Yee, cannot be considered actual construction cost, as no evidence was submitted relative thereto.

Malayan claims that the incident which led to the payment of contingency costs was construction-related because a case was filed against it as a result of the incident and that a temporary restraining order *(TRO)* was issued enjoining further construction works; hence, the engagement of lawyers was necessary to ensure the immediate resumption of the construction project.

The Court sustains the CA in ruling that the contingency costs in the amount of ₱631,154.39 should not be included in the computation of the ARCC. As duly noted by the CIAC and the CA, legal tees cannot be considered as part of the ARCC, as they are not directly related to the completion of the project. Despite the allegation that a TRO was issued, no proof of such order was presented by Malayan. Hence, such costs should not

be included as part of the ARCC, but should be charged against the party responsible for the incident, or Malayan as the one responsible for the general supervision, management, control over the project.

**D.7. Costs lncurred/Paid after June 2006**

The CIAC found it is unnecessary to resolve the issue: "What is the actual remaining construction cost to complete the Project spend by [Malayan] as of today [20 January 2009] in excess of St. Francis' estimated RCC?" Instead, it resolved the same issue based on Exhibit *"C-3"* which is the ARCC amounting to ₱614,593,565.96 as of August 10, 2006. Noting that Exhibit *"C-3"* was prepared by Malayan itself and submitted to St. Francis, and was close enough to June 7, 2006 when the project was completed, the CIAC used such evidence as the basis upon which disallowances were to be made, in order to arrive at the ARCC of ₱561,729,180.96.

The CA agreed with the CIAC that it is important to determine when the project was completed, as costs incurred after the cut-off date should no longer be included in the computation of the ARCC, and that the incontrovertible proof that the project was completed on June 7, 2006 is the Certificate of Occupancy[67] submitted by C.E. Manzanero, the duly-licensed architect of Malayan.

The Court finds no compelling reason to disturb the CA and the CIAC rulings that are consistent with Section 5 of the MOA which expressly states that the project "shall be deemed complete, and the obligation of Malayan fulfilled, if the construction and development of Project is finished as certified by the architect of the Project." Indeed, costs and expenses incurred after completion of the project cannot be considered as part of the ARCC.

**E. Entitlement to Reserved Units**

As discussed and computed above, the Court holds that **30%** of the reserved units should be allocated to Malayan, while **70%** should be allocated to St. Francis.

---

[67] Exhibit *"C-33"*.

**F. Income from Reserved Units**

The CIAC held that income realized from rental of the reserved units during the period from June 7, 2006 and the present date, should be determined as having been received by Malayan in trust for such party that would be determined to be the owner/s thereof. Considering its determination of the excess ARCC over the RCC, the CIAC stated that the said income should be proportionately shared as follows: 37.8% for St. Francis and 62.2% for Malayan. According to the CIAC, based on Sections 4 (a), (ii) (C)[68] and 4 (b),[69] ownership of the reserved units is in doubt during the intervening period from completion of the project and final determination of costs because of the phrases

---

[68] Section 4. *Distribution and Disposition of Units.* (a) As a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost. As of the date of the execution hereof, and on the basis of the total costs incurred to date in relation to the Remaining Construction Cost (as defined in Section 9(a) hereof), the parties shall respectively be entitled to the following (which entitlement shall be conditioned on, and subject to, adjustments as provided in sub-paragraph (b) of Section 4 in the event that the actual remaining construction cost exceeds the Remaining Construction Cost):

x x x x x x x x x

(ii) ASB- the following net saleable area:

x x x x x x x x x

(C) provided that the actual remaining construction cost do not exceed the Remaining Construction Cost, the net saleable area, particularly described in Schedule 4 hereof **shall be delivered to ASB** (St. Francis] upon completion of the Project and determination of its actual construction costs. If the actual remaining construction costs exceed the Remaining Construction Cost, sub-paragraph (b) of this Section 4 shall apply. (Emphasis added).

[69] *Id.* (b) In the event that the actual remaining construction costs exceed the Remaining Construction Cost as represented and warranted by [St. Francis] to Malayan under Section 9(a) hereof: and Malayan pays for such excess, the pro rata sharing in the net saleable area of the Building, as provided in sub-paragraph (a) of this Section 4 shall be adjusted accordingly. In such event, **Malayan shall be entitled** to such net saleable area in Schedule 4 that corresponds to the excess of the actual remaining cost-over the Remaining Construction Cost. (Emphasis added).

"shall be delivered to ASB" and "Malayan shall be entitled." Clearly, that the ownership of the reserved units shall be determined only upon completion of the project and the determination of the ARCC, because only then could it be computed if there is an excess ARCC over the RCC.

The CIAC observed that had the computation been done on the completion date of the project on June 7, 2006, there would already have been an allocation of ownership over the reserved units. Since the determination of the ARCC was done only almost three (3) years later during the arbitration proceedings, the issue had arisen as to who between the parties is entitled to the rental income from the reserved units which are deposited in the account of Malayan.

The CA agreed with the CIAC's ruling but modified the proportionate sharing of the reserved units, thus: 84% for Malayan and 16% for St. Francis. The CA explained that the income realized from rentals and sales of reserved units from June 7, 2006 until the finality of this case shall be considered as having been received by Malayan; thus, it must be subject to proper accounting in order to arrive at the proper sharing in accordance with the general principles of equity, and pursuant to the said proportionate sharing ratio.

Malayan contends that as the owner of the project, it is entitled to all of the civil fruits, including the rents from the lease of the reserved units. With respect to the accruing fruits, Malayan invokes Article 1187[70] of the New Civil Code, and claims that it is entitled to appropriate all the fruits and interests realized from the reserved units prior to the happening of two (2)

---

[70] ART. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, then fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

suspensive conditions, *i.e.,* the completion of the project and the determination of the ARCC. Malayan adds that it is iniquitous to award St. Francis a share in the income from the reserved units without making it share in the expenses and upkeep thereof.

The Court finds that Malayan's obligation to give the reserved units is unilateral because it was subject to 2 suspensive conditions, *i.e.,* the completion of the project and the determination of the ARCC, the happening of which are entirely dependent upon Malayan, without any equivalent prestation on the part of St. Francis. Even if the obligation is unilateral, Malayan cannot appropriate all the civil fruits received because it could be inferred from the nature and circumstances of the obligation that the intention of the person constituting the same was different. Section 9(b) of the MOA states that in the event that Malayan shall pay additional cost and expenses in excess of the RCC, it shall be entitled to such net saleable areas indicated in Schedule 4 that corresponds to the increase in the remaining construction costs, while St. Francis shall be entitled to such remaining areas, if any.

As aptly noted by the CIAC, the determination of the ARCC should have been made upon the date of completion of the project on June 7, 2006, but it was only about 3 years later during the arbitration proceedings that such determination was done. Not until now has the issue of the correct computation of the ARCC been finally resolved. Such long delay in the determination of the ARCC and the proportionate distribution of units in the project could not have been the intention of the parties. The Court, therefore, sustains the CA and the CIAC rulings that the income realized from the reserved units from the completion date until present, should be considered as having been received by Malayan in trust for such party that shall be determined to be the owner thereof. In light of the determination of the excess of the ARCC over the RCC, the income should be proportionately shared as follows: 30% for Malayan and 70% for St. Francis. Subject to proper accounting, upkeep expenses for the reserved units should also be shared by the parties in the same proportion.

**G. Counterclaims, Attorney's fees and Arbitration costs**

*Counterclaims*

Having determined above that the ARCC does not exceed the RCC and the total aggregate value of the reserved units, the Court joins the CA and the CIAC in ruling that Malayan is not entitled to its counterclaims.

*Attorney's fees*

The CIAC denied for lack of factual or legal basis the parties' respective claims and counterclaims for the award of attorney's fees. It noted that the parties failed to point out the contractual stipulation on attorney's fees and expenses of litigation in support of their respective claims therefor. According to the CIAC, based on its extensive discussions made in disposing the claims and counterclaims of the parties, it is clear that the two exceptions[71] under Article 2208 of the New Civil Code cited by St. Francis and Malayan do not obtain in this case. The CIAC explained that Malayan's denial of St. Francis' claims cannot be characterized as made in gross and evident bad faith, and that the disallowances of the ARCC in favor of St. Francis disprove that the filing of the arbitration case was "clearly unfounded." The CA affirmed the CIAC.

Finding that none of the exceptions under Article 2208[72] of the New Civil Code is present in this case, the Court agrees with the CA and the CIAC that the parties' claims for attorney's

---

[71] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(4) In case of clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

x x x x x x x x x

[72] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

fees must be denied. As held in *ABS-CBN Broadcasting Corporation v. Court of Appeals:*[73]

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be ref1ected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

*Arbitration costs*

The CIAC held that arbitration costs shall be maintained at the same level as initially shared based on the *pro rata* sharing

---

(1) When exemplary damages are awarded;

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

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[73] 361 Phil. 499, 529 (1999).

in accordance with the amounts claimed and counterclaimed by the parties. Stating that Section 1, Rule 142[74] of the Rules of Court suppletorily applies to arbitration proceedings since there is no corresponding provision in the CIAC rules of procedure, the CIAC ruled that there are good reasons to maintain their initial *pro rata* sharing thereof, considering that their respective claims and counterclaims have merits. Thus, it is just and equitable that both Malayan and St. Francis pay for their respective shares based on proportionate cost or amount of the claim. In contrast, the CA ruled that arbitration costs shall be maintained *pro rata* in accordance with the parties' respective shares in the reserved units.

After reviewing the conflicting rulings of the CIAC and the CA on arbitration costs, the Court finds the one rendered by CIAC to be in accord with law. Unlike the CA's ruling which is based only on the MOA provision on distribution and disposition of reserved units, the CIAC's ruling is based on the Amended Terms of Reference *(TOR)* which specifically provides that the costs of arbitration shall be on a *pro rata* basis subject to the determination of the CIAC which of the parties shall eventually shoulder such costs or the mode of sharing thereof.[75]

Citing Section 1, Rule 142 of the Rules of Court, the CIAC found it just and equitable that both Malayan and St. Francis pay for their respective shares based on the *pro rata* sharing in accordance with the amounts claimed and counterclaimed by the parties. Under the amended TOR, the Summary of Claims/Counterclaims and the arbitration expenses are as follows:

---

[74] SECTION 1. *Costs ordinarily follow results of suit.* - Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have the power, for special reasons, adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. x x x

[75] *Rollo* (G.R. Nos. 198196-17), Vol. I, p. 182.

CLAIMANT [St. Francis]

| | | |
|---|---|---|
| Value of Reserved Units being claimed | | ₱139,519,969.17<br>41,190.550.59<br>₱180,710,519.76 |
| Income | | 21,150,659.33 |
| Attorney's fees | 300,000.00 | |
| | | ₱202,161,179.09 |

RESPONDENT [Malayan]

| | | |
|---|---|---|
| Actual damages | ₱24,653,196.08 | |
| Attorney's fees | 2,000,000.00 | |
| | | ₱26,653,196.08 |
| **TOTAL SUM IN DISPUTE** | | **₱228,814,375.17** |

x x x x x x x x x

**IX ARBITRATION EXPENSES BASED ON A SUM IN DISPUTE OF ₱228,814,375.17**

| | |
|---|---|
| Filing Fee | ₱ 91,009.98 |
| Administrative Fee | 92,329.98 |
| Arbitrator's Fees | 629,566.60 |
| ADF | 214,566.60 |
| TOTAL | ₱ 1,064,517.38[76] |

Based on the parties' claims and counterclaims involving the total disputed sum of ₱228,814,375.17, the arbitration expenses in the total amount of ₱1,064,517.38 should be shared in the following proportion:

1. St. Francis: ₱202,161,179.09/₱228,814,375.17=0.88 x ₱1,064,517.38=**₱ 936,775.29**

2. Malayan: ₱26,653, 196.08/₱228,814,375.17=0.12x₱1,064,517.38 = **127,742.09**

Total Arbitration Expenses = **₱1,064,517.38**

**WHEREFORE,** premises considered, the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286

---

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

and 109298, is **AFFIRMED** with the following **MODIFICATIONS:**

l) The total amount of ₱57,474,561.39 should be deducted and excluded from the gross Actual Remaining Construction Cost *(ARCC)* of ₱562,866,135.02 to arrive at the net ARCC of ₱505,391,573.63;

2) Malayan is entitled to 30% ownership over the reserved units (₱52,966,724.63/₱175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to 70% (₱122,889,598.42/₱175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;

4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with the amounts claimed and counterclaimed by them, namely, St. Francis: ₱936,775.29; and Malayan: ₱127,742.09;

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;

6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Condominium

Certificates of Title covering the reserved units awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated May 27, 2009 which are not affected by the above modifications are affirmed. No costs.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 201264. January 11, 2016]

**FLORANTE VITUG,** *petitioner, vs.* **EVANGELINE A. ABUDA,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; MORTGAGE; ELEMENTS OF A VALID MORTGAGE CONTRACT, PRESENT.—** All the elements of a valid mortgage contract were present. For a mortgage contract to be valid, the absolute owner of a property must have free disposal of the property. That property must be used to secure the fulfillment of an obligation. Article 2085 of the Civil Code provides: Art. 2085. The following requisites are essential to contracts of pledge and mortgage: (1) That they be constituted to secure the fulfilment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Petitioner, who held under his name a transfer certificate of title to the property, mortgaged the property to respondent to secure the payment of his loan of ₱600,000.00.

x x x Petitioner's undisputed title to and ownership of the property is sufficient to give him free disposal of it. As owner of the property, he has the right to enjoy all attributes of ownership including *jus disponendi* or the right to encumber, alienate, or dispose his property "without other limitations than those established by law."

**2. ID.; ID.; ID.; RESTRICTION IMPOSED ON THE TITLE BY THE NATIONAL HOUSING AUTHORITY (NHA) CANNOT DIVEST THE OWNER OF HIS OWNERSHIP RIGHTS; IT MERELY SERVES AS A NOTICE TO THE WHOLE WORLD THAT NHA HAS CLAIMS OVER THE PROPERTY.—** Petitioner's claim that he lacks free disposal of the property stems from the existence of the restrictions imposed on his title by the National Housing Authority. x x x The National Housing Authority's restrictions were provisions in a contract it executed with petitioner. This contract bound petitioner to certain conditions before transferring or encumbering the property. Specifically, when the National Housing Authority sold the property to petitioner, petitioner became obligated not to sell, encumber, mortgage, lease, sublease, alter, or dispose the property without the National Housing Authority's consent. These restrictions do not divest petitioner of his ownership rights. They are mere burdens or limitations on petitioner's *jus disponendi.* Thus, petitioner may dispose or encumber his property. However, the disposition or encumbrance of his property is subject to the limitations and to the rights that may accrue to the National Housing Authority. When annotated to the title, these restrictions serve as notice to the whole world that the National Housing Authority has claims over the property, which it may enforce against others.

**3. ID.; ID.; ID.; CONTRACTS THAT CONTAIN ALL THE ELEMENTS FOR VALIDITY BUT OTHERWISE SUBJECT TO CERTAIN RESTRICTIONS ARE MERELY VOIDABLE BY THE PERSON IN WHOSE FAVOR THEY WERE MADE.—** Contracts that only subject a property owner's property rights to conditions or limitations but otherwise contain all the elements of a valid contract are merely voidable by the person in whose favor the conditions or limitations are made. The mortgage contract entered into by petitioner and respondent contains all the elements of a valid contract of mortgage. The trial court and the Court of Appeals found no irregularity in its

execution. There was no showing that it was attended by fraud, illegality, immorality, force or intimidation, and lack of consideration. At most, therefore, the restrictions made the contract entered into by the parties voidable by the person in whose favor they were made—in this case, by the National Housing Authority. Petitioner has no actionable right or cause of action based on those restrictions. Having the right to assail the validity of the mortgage contract based on violation of the restrictions, the National Housing Authority may seek the annulment of the mortgage contract. Without any action from the National Housing Authority, rights and obligations, including the right to foreclose the property in case of non-payment of the secured loan, are still enforceable between the parties that executed the mortgage contract.

**4. ID.; ID.; ID.; ID.; TWO OPTIONS OF THE PERSON IN WHOSE FAVOR THE RESTRICTIONS WERE MADE; ONLY THAT PERSON WHO HAS THE RIGHT TO INVOKE THE RESTRICTION HAS THE CAUSE OF ACTION TO ANNUL THE CONTRACT.—** The voidable nature of contracts entered into in violation of restrictions or conditions necessarily implies that the person in whose favor the restrictions were made has two (2) options. It may either: (1) waive its rights accruing from such restrictions, in which case, the duly executed subsequent contract remains valid; or (2) assail the subsequent contract based on the breach of restrictions imposed in its favor. In *Sarmiento*, this court recognized that the right to waive follows from the right to invoke any violation of conditions under the contract. Only the person who has the right to invoke this violation has the cause of action for annulment of contract. The validity or invalidity of the contract on the ground of the violation is dependent on whether that person will invoke this right. x x x There is no showing that the National Housing Authority assailed the validity of the mortgage contract on the ground of violation of restrictions on petitioner's title. The validity of the mortgage contract based on the restrictions is not an issue between the parties. Petitioner has no cause of action against respondent based on those restrictions. The mortgage contract remains binding upon petitioner and respondent.

**5. ID.; ID.; PRINCIPLE OF *IN PARI DELICTO*, APPLIED.—** Even if the mortgage contract were illegal or wrongful, neither

of the parties may assail the contract's validity as against the other because they were equally at fault. This is the principle of *in pari delicto* (or *in delicto*) as embodied in Articles 1411 and 1412 of the Civil Code[.] x x x Under this principle, courts shall not aid parties in their illegal acts. The court shall leave them as they are. It is an equitable principle that bars parties from enforcing their illegal acts, assailing the validity of their acts, or using its invalidity as a defense. x x x Petitioner in this case did not come to this court with clean hands. He was aware of the restrictions in his title when he executed the loan and mortgage contracts with respondent. He voluntarily executed the contracts with respondent despite this knowledge. He also availed himself of the benefits of the loan and mortgage contract. He cannot now assail the validity of the mortgage contract to escape the obligations incurred because of it.

**6. ID.; INTEREST; REDUCTION OF INTEREST RATE IS PROPER WHEN THE LOAN WAS OBTAINED OUT OF EXTREME NECESSITY.—** Under the circumstances of this case, we find no reason to uphold the stipulated interest rates of 5% to 10% per month on petitioner's loan. Petitioner obtained the loan out of extreme necessity. As pointed out by respondent, the property would have been earlier foreclosed by the National Housing Authority if not for the loan. Moreover, it would be unjust to impose a heavier burden upon petitioner, who would already be losing his and his family's home. Respondent would not be unjustly deprived if the interest rate is reduced. After all, respondent still has the right to foreclose the property. Thus, we affirm the Court of Appeals Decision to reduce the interest rate to 1% per month or 12% per annum. However, x x x in accordance with the guidelines set forth in *Nacar v. Gallery Frames* x x x the interest rate for petitioner's loan should be further reduced to 6% per annum from July 1, 2013 until full satisfaction.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.
*Manuel A. Año* for respondent.

## D E C I S I O N

**LEONEN, *J.*:**

Parties who have validly executed a contract and have availed themselves of its benefits may not, to escape their contractual obligations, invoke irregularities in its execution to seek its invalidation.

This is a Petition for Review on Certiorari under Rule 45 assailing the Court of Appeals' October 26, 2011 Decision and its March 8, 2012 Resolution. The Court of Appeals affirmed the Regional Trial Court's December 19, 2008 Decision upholding the validity of the mortgage contract executed by petitioner Florante Vitug (Vitug) and respondent Evangeline A. Abuda (Abuda).

On March 17, 1997, Abuda loaned ₱250,000.00 to Vitug and his wife, Narcisa Vitug.[1] As security for the loan, Vitug mortgaged to Abuda his property in Tondo Foreshore along R-10, Block A-50-3, Del Pan to Kagitingan Streets, Tondo, Manila.[2] The property was then subject of a conditional Contract to Sell between the National Housing Authority and Vitug. Pertinent portions of the mortgage deed reads:

> That, Mortgagor, is the owner, holder of a Conditional Contract to Sell of the National Housing Authority (NHA) over a piece of property located at the Tondo Foreshore along R-10, Block "A-50-3, Delpan to Kagitingan Streets in the district of Tondo, Manila;
>
> That, with the full consent of wife Narcisa Vitug, hereby mortgage to Evangeline A. Abuda, with full consent of husband Paulino Abuda, said property for TWO HUNDRED FIFTY THOUSAND PESOS ONLY (₱250,000.00), in hand paid by Mortgagee and in hand received to full satisfaction by Mortgagor, for SIX MONTHS (6) within which to pay back the full amount plus TEN PERCENT (10%) agreed interest per month counted from the date stated hereon;

---

[1] *Rollo,* p. 27.

[2] *Id*.

That, upon consummation and completion of the sale by the NHA of said property, the title-award thereof, shall be received by the Mortgagee by virtue of a Special Power of Attorney, executed by Mortgagor in her favor, authorizing Mortgagee to expedite, follow-up, cause the release and to received [sic] and take possession of the title award of the said property from the NHA, until the mortgage amount is fully paid for and settled[.][3]

On November 17, 1997, the parties executed a "restructured"[4] mortgage contract on the property to secure the amount of ₱600,000.00 representing the original ₱250,000.00 loan, additional loans,[5] and subsequent credit accommodations[6] given by Abuda to Vitug with an interest of five (5) percent per month.[7] By then, the property was covered by Transfer Certificate of Title No. 234246 under Vitug's name.[8]

Spouses Vitug failed to pay their loans despite Abuda's demands.[9]

On November 21, 2003, Abuda filed a Complaint for Foreclosure of Property before the Regional Trial Court of Manila.[10]

On December 19, 2008, the Regional Trial Court promulgated a Decision in favor of Abuda.[11] The dispositive portion of the Decision reads:

**WHEREFORE,** judgment is rendered in favor of the plaintiffs [sic] and against the defendant:

---

[3] *Id*. at 27-28.

[4] *Id*. at 29.

[5] *Id*. at 27. The Regional Trial Court Decision dated December 19, 2008 was penned by Judge Zenaida R. Daguna.

[6] *Id*. at 28.

[7] CA *rollo,* p. 128.

[8] *Rollo,* p. 28.

[9] *Id*.

[10] *Id*.

[11] *Id*.

1. Ordering the defendant to pay unto the court and/or to the judgment debtor within the reglementary period of Ninety (90) days the principal sum of ₱600,000.00 with interest at 5% per month from May 31, 2002 to actual date of payment plus ₱20,000.00 as and for attorney's fees;

2. Upon default of the defendant to fully pay the aforesaid sums, the subject mortgaged property shall be sold at public auction to pay off the mortgage debt and its accumulated interest plus attorney's fees, expenses and costs; and

3. After the confirmation of the sale, ordering the defendant and all persons claiming rights under her [sic] to immediately vacate the subject premises.

**SO ORDERED.**[12]

Vitug appealed the December 19, 2008 Regional Trial Court Decision before the Court of Appeals.[13] He contended that the real estate mortgage contract he and Abuda entered into was void on the grounds of fraud and lack of consent under Articles 1318, 1319, and 1332 of the Civil Code.[14] He alleged that he was only tricked into signing the mortgage contract, whose terms he did not really understand. Hence, his consent to the mortgage contract was vitiated.[15]

On October 26, 2011, the Court of Appeals promulgated a Decision,[16] the dispositive portion of which reads:

**WHEREFORE,** the instant appeal is **PARTIALLY GRANTED.** The Decision of the RTC dated December 19, 2008 in Civil Case No. 03-108470 in favor of the appellee and against the appellant is **AFFIRMED** with the **MODIFICATION** that an interest rate of 1%

---

[12] *Id*. at 27.

[13] *Id*. at 28.

[14] *Id*. at 29.

[15] *Id*.

[16] *Id*. at 26-34. The Decision was penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Noel G. Tijam and Edwin D. Sorongon of the Special Tenth Division, Court of Appeals Manila.

per month or 12% per annum shall be applied to the principal loan of ₱600,000.00, computed from the date of judicial demand, *i.e.,* November 21, 2003; and 12% interest per annum on the amount due from the date of the finality of the Decision until fully paid.

**SO ORDERED.**[17]

The Court of Appeals found that Vitug failed to pay his obligation within the stipulated six-month period under the March 17, 1997 mortgage contract.[18] As a result of this failure, the parties entered into a restructured mortgage contract on November 17, 1997.[19] The new mortgage contract was signed before a notary public by Vitug, his wife Narcisa, and witnesses Rolando Vitug, Ferdinand Vitug, and Emily Vitug.[20]

The Court of Appeals also found that all the elements of a valid mortgage contract were present in the parties' mortgage contract.[21] The mortgage contract was also clear in its terms-that failure to pay the ₱600,000.00 loan amount, with a 5% interest rate per month from November 17, 1997 to November 17, 1998, shall result in the foreclosure of Vitug's mortgaged property.[22] No evidence on record showed that Vitug was defrauded when he entered into the agreement with Abuda.[23]

However, the Court of Appeals found that the interest rates imposed on Vitug's loan were "iniquitous, unconscionable[,] and exorbitant."[24] It instead ruled that a legal interest of 1% per month or 12% per annum should apply from the judicial demand on November 21, 2003.[25]

---

[17] *Id*. at 33.

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

[19] *Id*.

[20] *Id*.

[21] *Id*. at 30.

[22] *Id*. at 31.

[23] *Id*. at 33.

[24] *Id*.

[25] *Id*.

On November 23, 2011, Vitug moved for the reconsideration of the Court of Appeals' October 26, 2011 Decision.[26] He pointed out that not all the requisites of a valid mortgage contract were present since he did not have free disposal of his property when he mortgaged it to Abuda. His transfer certificate of title had an annotation by the National Housing Authority, which restricted his right to dispose or encumber the property.[27] The restriction clause provided that the National Housing Authority's consent must first be obtained before he may dispose or encumber his property.[28]

Abuda, according to Vitug, failed to get the National Housing Authority's consent before the property was mortgaged to him.

Vitug also argued in his Motion for Reconsideration that the property was exempt from execution because it was constituted as a family home before its mortgage.

In the Resolution promulgated on March 8, 2012,[29] the Court of Appeals denied Vitug's Motion for Reconsideration.

Vitug filed this Petition for Review on Certiorari under Rule 45 to assail the Court of Appeals' October 26, 2011 Decision and its March 8, 2012 Resolution.

Vitug raises the following issues:

First, whether petitioner Florante Vitug may raise in this Petition issues regarding the National Housing Authority's alleged lack of consent to the mortgage, as well as the exemption of his property from execution;

Second, whether the restriction clause in petitioner's title rendered invalid the real estate mortgage he and respondent Evangeline Abuda executed; and

---

[26] *Id*. at 65.

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

[28] *Id*. at 66.

[29] *Id*. at 15.

Lastly, whether petitioner's property is a family home that is free from execution, forced sale, or attachment under the Family Code.[30]

We deny the Petition.

Petitioner argues that not all the requisites of a valid mortgage are present.[31] A mortgagor must have free disposal of the mortgaged property.[32] The existence of a restriction clause[33] in his title means that he does not have free disposal of his property.[34] The restriction clause does not allow him to mortgage the property without the National Housing Authority's approval.[35] Since the National Housing Authority never gave its consent to the mortgage,[36] the mortgage contract between him and respondent is invalid.[37]

On the other hand, respondent argues that the only issue in this case should be the validity of the real estate mortgage executed by petitioner in her favor.[38] Petitioner raised other

---

[30] *Id*. at 16.

[31] *Id*. at 17.

[32] *Id*.

[33] *Id*. at 17-18. The Restriction reads: "Entry No. *4519/*V -103/T-234246-R E S T R I C T I 0 N -that the Vendee shall not sell, encumber, mortgage, lease, sub-let or in any manner, alter or dispose the lot or right therein at any time, in whole or in part without obtaining the written consent of the Vendor. Other restrictions set forth in Doc. No. 287; Page No. 59; Book No. 250; SERIES of 1997 of Notary Public for Quezon City, Liberty S. Perez.

Date of instrument- June 24, 1997

Date of inscription- June 25, 1997 – 11:39 a.m.

EXPEDITO A. JAVIER
Register of Deeds"

[34] *Id*. at 17.

[35] *Id*. at 17-18.

[36] *Id*. at 18.

[37] *Id*. at 17.

[38] *Id*. at 91.

issues, such as the alleged lack of written consent by the National Housing Authority (and the property's exemption from execution), only in his Motion for Reconsideration before the Court of Appeals.[39]

Respondent also argues that the National Housing Authority issued a Permit to Mortgage the property. This was formally offered in evidence before the Regional Trial Court as Exhibit "E".[40] The National Housing Authority even accepted respondent's personal checks to settle petitioner's mortgage obligations to the National Housing Authority.[41] The National Housing Authority would have already foreclosed petitioner's property if not for the loan that respondent extended to petitioner.[42]

Petitioner counters that the Permit to Mortgage cited by respondent was only valid for 90 days and was subject to the conditions that respondent failed to fulfill. These conditions are:

> (1) The Mortgage Contract must provide that:
>
> "In the event of foreclosure, the NHA shall be notified of the date, time and place of the auction sale so that it can participate in the foreclosure sale ofthe property."
>
> (2) The mortgage contract must be submitted to NHA for verification and final approval [.][43]

Thus, according to petitioner, there was neither written consent nor approval by the National Housing Authority of the mortgage contracts.[44]

---

[39] *Id*.

[40] *Id*. at 92.

[41] *Id*. at 143.

[42] *Id*.

[43] *Id*. at 96.

[44] *Id*. at 97.

Petitioner further contends that the alleged lack of NHA consent on the mortgage (and, being a family home, his property's exemption from execution) was raised in his Answer to respondent's complaint for foreclosure filed before the Regional Trial Court, thus:

> 20. Similarly, defendant has constituted their family home over said mortgage property and should that property be sold, defendant and his family will be left with no place to reside with [sic] within Metro Manila, hence, for humanitarian reason[s], the defendant prayed that he be given ample time within which to settle his obligation with the plaintiff;
>
> 21. Lastly, the Memorandum of Encumbrances contained at the back of defendant's title prohibits her from selling, encumbering, mortgaging, leasing, sub-leasing or in any manner altering or disposing the lot or right thereon, in whole or in part within the period of ten (10) years from the time of issuance of said title without first obtaining the consent of the NHA. As reflected in the title, the same was issued on 25 June 1997 hence, the mortgage executed even prior to the issuance of said title should be declared void.[45]

I

Due process[46] dictates that arguments not raised in the trial court may not be considered by the reviewing court.[47]

---

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

[46] *See Del Rosario v. Bonga,* 402 Phil. 949 (2001) [Per *J*. Panganiban, Third Division], *citing Keng Hua v. Court of Appeals,* 349 Phil. 925 (1998) [Per *J*. Panganiban, Third Division]; *Arcelona v. Court of Appeals,* 345 Phil. 250 (1997) [Per *J*. Panganiban, Third Division]; *Mendoza v. Court of Appeals,* 340 Phil. 634 (1997) [Per *J*. Panganiban, Third Division]; *Remman Enterprises, Inc. v. Court of Appeals,* 335 Phil. 1150 (1997) [Per *J*. Panganiban, Third Division].

1997 RULES OF CIV. PROC., Rule 44, Sec. 15. Questions that may be raised on appeal. Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

[47] *See Del Rosario v. Bonga,* 402 Phil. 949 (2001) [Per *J*. Panganiban, Third Division].

Petitioner may raise in his Petition the issues of lack of the National Housing Authority's consent to the mortgage and his property's alleged exemption from execution.

The records show that petitioner mentioned these issues as early as in his Answer to respondent's Complaint[48] and Pre-trial Brief.[49] The trial court acknowledged these issues, but found that his defenses based on these grounds could not be given credence:

> The defendant further stated that he is willing to pay the obligation provided that the interest be equitably reduced because the interest is unconscionable. Further, the said property constituted their family home. The defendant claimed that Memorandum of Encumbrance prohibits her from selling, encumbering, mortgaging, leasing, subleasing or in any manner altering or disposing the lot or right thereon in whole or in part within ten (10) years from the time of issuance of the said title without obtaining the consent of the NHA.
>
> ... The court opines that the defendant has failed to raise a legitimate and lawful ground in order to bar the herein plaintiff from asserting its lawful right under the law.
>
> The contention of the defendant that the subject mortgaged property is their family home is irrelevant as the debt secured by mortgages on the premises before or after the constitution of the family horne does not exempt the same from execution *(Rule 106 of the Rules of Court).*[50]

Whether these arguments seasonably raised are valid is, however, a different matter.

II

All the elements of a valid mortgage contract were present. For a mortgage contract to be valid, the absolute owner of a property must have free disposal of the property [51] That property must be used to secure the fulfillment of an obligation.[52] Article 2085 of the Civil Code provides:

---

[48] RTC *rollo,* pp. 15-19.

[49] *Id*. at 76-79.

[50] *Id*. at 158.

[51] CIVIL CODE, Art. 2085.

[52] CIVIL CODE, Art. 2085.

Art. 2085. The following requisites are essential to contracts of pledge and mortgage:

> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
>
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

. . . . . .

Petitioner, who held under his name a transfer certificate of title to the property, mortgaged the property to respondent to secure the payment of his loan of ₱600,000.00.

Petitioner claims that he only borrowed ₱250,000.00 and that he was only made to sign another mortgage contract whose terms he did not agree to.

These claims were already found by the trial court and the Court of Appeals to be unsupported by evidence. Petitioner's consent to the mortgage contract dated November 17, 1997 was not vitiated. He voluntarily signed it in the presence of a notary public, his wife, and other witnesses.[53]

Further, the amount of ₱600,000.00 under the November 17, 1997 mortgage contract represented the initial loan of ₱250,000.00 and the subsequent loan amounts, which were found to have been actually released to petitioner. The November 17, 1997 mortgage contract reflected the changes in the parties' obligations after they executed the March 17, 1997 mortgage contract.

This court is not a trier of facts. As a general rule, findings of fact of the lower court and of the Court of Appeals are not reviewable and are binding upon this court[54] unless the circumstances of the case are shown to be covered by the

---

[53] *Rollo,* p. 30.

[54] *See Ramos, Sr. v. Gatchalian Realty, Inc.,* 238 Phil. 689 (1987) [Per *J.* Gutierrez, Jr., Third Division].

exceptions.[55] Petitioner failed to show any ground for this court to review the trial court's and the Court of Appeals' finding that petitioner mortgaged his property in consideration of a loan amounting to ₱600,000.00.

Petitioner's undisputed title to and ownership of the property is sufficient to give him free disposal of it. As owner of the property, he has the right to enjoy all attributes of ownership including *jus disponendi* or the right to encumber, alienate, or dispose his property "without other limitations than those established by law."[56]

Petitioner's claim that he lacks free disposal of the property stems from the existence of the restrictions imposed on his title by the National Housing Authority. These restrictions were annotated on his title, thus:

---

[55] *See Ramos, Sr. v. Gatchalian Realty, Inc.,* 238 Phil. 689 (1987) [Per *J.* Gutierrez, Jr., Third Division].

*See also Cristobal v. Court of Appeals,* 353 Phil. 318 (1998) [Per *J.* Bellosillo, First Division] and *Bank of the Philippine Islands v. Sarabia Manor Hotel,* G.R. No. 175844, July 29, 2013, 702 SCRA 432, 444 [Per *J.* Perlas-Bernabe, Second Division]: "(a) when the findings are grounded entirely on speculations, surmises, or conjectures; (b) when the inference made is manifestly mistaken, absurd, or impossible; (c) when there is a grave abuse of discretion; (d) when the judgment is based on misappreciation of facts; (e) when the findings of fact are conflicting; (f) when in making its findings, the same are contrary to the admissions of both parties; (g) when the findings are contrary to those of the trial court; (h) when the findings are conclusions without citation of specific evidence on which they are based; (i) 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; and (j) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

[56] CIVIL 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.

*See also Philippine Banking Corporation v. Lui She,* 129 Phil. 526 (1967) [Per *J.* Castro, *En Banc*].

Entry No. 4519/V-013/T-234246 – R E S T R I CT I O N – that the Vendee shall not sell, encumber, mortgage, lease, sub-let or in any manner, alter or dispose the lot or right therein at any time, in whole or in part without obtaining the written consent of the Vendor. Other restrictions set forth in Doc. No. 287; Page No. 59; Book No. 250; SERIES of 1997 of Notary Public for Quezon City, Liberty S. Perez.

Date of instrument- June 24, 1997
Date of inscription- June 25, 1997 11:39 a.m.[57]

The National Housing Authority's restrictions were provisions in a contract it executed with petitioner. This contract bound petitioner to certain conditions before transferring or encumbering the property. Specifically, when the National Housing Authority sold the property to petitioner, petitioner became obligated not to sell, encumber, mortgage, lease, sublease, alter, or dispose the property without the National Housing Authority's consent.

These restrictions do not divest petitioner of his ownership rights. They are mere burdens or limitations on petitioner's *jus disponendi.* Thus, petitioner may dispose or encumber his property. However, the disposition or encumbrance of his property is subject to the limitations and to the rights that may accrue to the National Housing Authority. When annotated to the title, these restrictions serve as notice to the whole world that the National Housing Authority has claims over the property, which it may enforce against others.

Contracts entered into in violation of restrictions on a property owner's rights do not always have the effect of making them void *ab initio.*[58] This has been clarified as early as 1956 in *Municipality of Camiling v. Lopez.*[59]

---

[57] Regional Trial Court *Rollo*, Exh. "F-1", pp. 123-124.

[58] *See Municipality of Camiling v. Lopez,* 99 Phil. 187, 189-191 (l956) [Per *J*. Labrador, *En Banc*]. *See also Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, First Division]; *Flora v. Prado,* 465 Phil. 334 (2004) [Per Ynares-Santiago, *J*., First Division].

[59] 99 Phil. 187 (1956) [Per *J*. Labrador, *En Banc*].

The Municipality of Camiling sought to collect from Diego Z. Lopez payments for the lease of "certain fisheries." As a defense, Diego Z. Lopez invoked the alleged nullity of the lease contract he entered into with the Municipality of Camiling.

Citing *Municipality of Hagonoy v. Evangelista,*[60] the trial court ruled that the lease contract between the Municipality of Camiling and Diego Z. Lopez was void since it "was not approved by the provincial governor in violation of Section 2196 of the Revised Administrative Code."[61] This court reversed the trial court's Decision and noted the incorrect interpretation in *Municipality of Hagonoy* of the term "nulos" under Article 4 of the then Civil Code: *"Son nulos los actos ejecutados contra lo dispuesto en la ley, salvo los casos en que la naisma ley ordene su validez."*[62]

In *Municipality of Camiling,* this court explained that void acts declared in Article 4 of the Old Civil Code[63] refer to those made in violation of the law. Not all those acts are void from the beginning. Void acts may be "those that are *ipso facto* void and those which are merely voidable."[64]

The lease contract executed by the Municipality of Camiling and Diego Z. Lopez was not treated as *ipso facto* void. Section 2196 of the Administrative Code required the provincial governor's approval before the municipal council entered into contracts. However, the same provision did not prohibit the municipal council from entering into contracts involving the

---

[60] 73 Phil. 586 (1942) [Per *J.* Bocobo, *En Banc*].

[61] *Municipality of Camiling v. Lopez,* 99 Phil. 187, 188 (1956) [Per *J.* Labrador, *En Banc*].

[62] *Id* at 189. This provision has been reproduced in our current Civil Code, thus:

Article 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

[63] *Id*.

[64] *Municipality of Camiling v. Lopez,* 99 Phil. 187, 188 (1956) [Per *J.* Labrador, *En Banc*].

properties of the municipality.[65] The municipal council's exercise of power to enter into these contracts might have been limited, but its power was recognized. This court found that aside from the lack of approval, the contract had no badge of illegality that would make it *ipso facto* void. The execution of the contract was not tainted with violation of public order, morality, or public policy. The contract could have been ratified. Hence, this court said that it was "merely voidable at the option of the party who in law is granted the right to invoke its invalidity."[66]

The same doctrine was repeated in *Sarmiento v. Salud,*[67] which involved a property in Kamuning, Quezon City. The property was sold by Philippine Homesite and Housing Corp. to Spouses Francisco and Marcelina Sarmiento. The transfer certificate of title that covered the property contained an annotation stating that the property was sold on the condition that it could not be resold within 25 years from contract date. Sale could be made within the period only to People's Homesite and Housing Corporation.[68] Spouses Sarmiento later mortgaged the property to Jorge Salud. Because Spouses Sarmiento failed to redeem the property, the sheriff auctioned and sold the property to Jorge Salud, who was issued a certificate of sale.

Spouses Sarmiento sought to prevent the foreclosure of the property by filing an action for annulment of the foreclosure proceedings, sale, and certificate of sale on the ground that the prohibition against sale of the property within 25 years was violated.

This court did not declare the contract void for violating the condition that the property could not be resold within 25 years. Instead, it recognized People's Homesite and Housing Corporation's right to cause the annulment of the contract. Since the condition was made in favor of People's Homesite and

---

[65] *Id*.

[66] *Id*. at 190.

[67] 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division].

[68] *Id*. at 568.

Housing Corporation, it was the Corporation, not Spouses Sarmiento, who had a cause of action for annulment.[69] In effect, this court considered the contract between Spouses Sarmiento and Jorge Salud as merely voidable at the option of People's Homesite and Housing Corporation.

Thus, contracts that contain provisions in favor of one party may be void *ab initio* or voidable.[70] Contracts that lack consideration,[71] those that are against public order or public policy,[72] and those that are attended by illegality[73] or immorality[74] are void *ab initio*.

Contracts that only subject a property owner's property rights to conditions or limitations but otherwise contain all the elements of a valid contract are merely voidable by the person in whose favor the conditions or limitations are made.[75]

---

[69] *Id*.

[70] *See Municipality of Camiling v. Lopez,* 99 Phil. 187, 189-191 (1956) [Per *J*. Labrador, *En Banc*].

[71] CIVIL CODE, Art. 1318. There is no contract unless the following requisites concur:

....

(3) Cause of the obligation which is established.

[72] CIVIL CODE, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[73] CIVIL CODE, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[74] CIVIL CODE, Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[75] *Municipality of Camiling v. Lopez,* 99 Phil. 187, 189-191 (1956) [Per *J*. Labrador, Second Division]; *Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division]. *See also San Agustin v. Court of Appeals,* 422 Phil. 686 (2001) [Per *J*. Quisumbing, Second

The mortgage contract entered into by petitioner and respondent contains all the elements of a valid contract of mortgage. The trial court and the Court of Appeals found no irregularity in its execution. There was no showing that it was attended by fraud, illegality, immorality, force or intimidation, and lack of consideration.

At most, therefore, the restrictions made the contract entered into by the parties voidable[76] by the person in whose favor they were made-in this case, by the National Housing Authority.[77] Petitioner has no actionable right or cause of action based on those restrictions.[78]

Having the right to assail the validity of the mortgage contract based on violation of the restrictions, the National Housing Authority may seek the annulment of the mortgage contract.[79] Without any action from the National Housing Authority, rights and obligations, including the right to foreclose the property in case of non-payment of the secured loan, are still enforceable between the parties that executed the mortgage contract.

The voidable nature of contracts entered into in violation of restrictions or conditions necessarily implies that the person in whose favor the restrictions were made has two (2) options. It may either: (1) waive[80] its rights accruing from such restrictions, in which case, the duly executed subsequent contract remains valid; or (2) assail the subsequent contract based on the breach of restrictions imposed in its favor.

---

Division]; *Flora v. Prado,* 465 Phil. 334 (2004) [Per *J*. Ynares-Santiago, First Division].

[76] *Municipality of Camiling v. Lopez,* 99 Phil. 187, 189-191 (1956) [Per *J.* Labrador, Second Division].

[77] *Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division].

[78] *See Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division].

[79] *Lalicon and Lalicon v. National Housing Authority,* 669 Phil. 231 (2011) [Per *J*. Abad, Third Division].

[80] *See Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division].

In *Sarmiento,* this court recognized that the right to waive follows from the right to invoke any violation of conditions under the contract. Only the person who has the right to invoke this violation has the cause of action for annulment of contract. The validity or invalidity of the contract on the ground of the violation is dependent on whether that person will invoke this right. Hence, there was effectively a waiver on the part of People's Homesite and Housing Corporation when it did riot assail the validity of the mortgage in that case:

> It follows that on the assumption that the mortgage to appellee Salud and the foreclosure sale violated the condition in the Sarmiento contract, only the PHHC was entitled to invoke the condition aforementioned, and not the Sarmientos. The validity or invalidity of the sheriffs foreclosure sale to appellant Salud thus depended exclusively on the PHHC; the latter could attack the sale as violative of its right of exclusive reacquisition; but it (PHHC) also could waive the condition and treat the sale as good, in which event, the sale can not be assailed [for] breach of the condition aforestated. Since it does not appear anywhere in the record that the PHHC treated the mortgage and foreclosure sale as an infringement of the condition, the validity of the mortgage, with all its consequences, including its foreclosure and sale thereat, can not be an issue between the parties to the present case. In the last analysis, the appellant, as purchaser at the foreclosure sale, should be regarded as the owner of the lot, subject only to the right of PHHC to have his acquisition of the land set aside if it so desires.[81]

There is no showing that the National Housing Authority assailed the validity of the mortgage contract on the ground of violation of restrictions on petitioner's title. The validity of the mortgage contract based on the restrictions is not an issue between the parties. Petitioner has no cause of action against respondent based on those restrictions. The mortgage contract remains binding upon petitioner and respondent.

In any case, there was at least substantial compliance with the consent requirement given the National Housing Authority's issuance of a Permit to Mortgage. The Permit reads:

---

[81] *Id*. at 568-569.

25 November 1997

MR. FLORANTE VITUG
901 Del Pan Street
Tondo, Manila

PERMIT TO MORTGAGE

Dear Mr. Vitug,

Please be informed that your request dated 20 November 1997 for permission to mortgage Commercial Lot 5, Block 1, Super Block 3, Area I, Tondo Foreshore Estate Management Project covered by TCT No. 234246 is hereby GRANTED subject to the following terms and conditions:

1. The Mortgage Contract must provide that:

> "In the event of foreclosure, the NHA shall be notified of the date, time and place of the auction sale so that it can participate in the foreclosure sale of the property."

2. The mortgage contract must be submitted to NHA for verification and final approval; and

3. This permit shall be good only for a period of ninety (90) days from date of receipt hereof.

Very truly yours,
(Signed)
Mariano M. Pineda
General Manager[82]

Petitioner insists that the Permit cannot be treated as consent by the National Housing Authority because of respondent's failure to comply with its conditions.

However, a reading of the mortgage contract executed by the parties on November 17, 1997 shows otherwise. The November 17, 1997 mortgage contract had references to the above conditions imposed by the National Housing Authority, thus:

---

[82] RTC *rollo,* p. 122. "Exh. E", November 25, 1997.

It is the essence of this Contract, that if and should the Mortgagor fails to comply and pay the principal obligations hereon within the period of the Contract, *the Mortgage shall be foreclosed according to law and in which case the NHA shall be duly notified of the matter.*

*That this mortgage contract shall be submitted to the NHA for verification* [sic] *and final approval in accordance with NHA permit to mortgage the property.*[83] (Emphasis supplied)

Assuming there was non-compliance with the conditions set forth in the Permit, petitioner cannot blame respondent. The restrictions were part of the contract between the National Housing Authority and petitioner. It was petitioner, not respondent, who had the obligation to notify and obtain the National Housing Authority's consent within the prescribed period before sale or encumbrance of the property.

Petitioner cannot invoke his own mistake to assail the validity of a contract he voluntarily entered into.[84]

III

Even if the mortgage contract were illegal or wrongful, neither of the parties may assail the contract's validity as against the other because they were equally at fault.[85] This is the principle of *in pari delicto* (or *in delicto)* as embodied in Articles 1411 and 1412 of the Civil Code:

Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in pari delicto, they shall have no action against

---

[83] *Id*. at 5.

[84] CIVIL CODE, Art. 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; *nor can those who* exerted intimidation, violence, or undue influence or employed fraud, or *caused mistake base their actions upon these flaws of the contract.*

[85] *Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J*. J.B.L. Reyes, Second Division]. *See also Toledo v. Hyden,* 652 Phil. 70 (2010) [Per *J*. Del Castillo, First Division).

each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply his promise.

Under this principle, courts shall not aid parties in their illegal acts.[86] The court shall leave them as they are.[87] It is an equitable principle that bars parties from enforcing their illegal acts, assailing the validity of their acts, or using its invalidity as a defense.[88]

In the 1906 case of *Batarra v. Marcos,*[89] this court declared that a person cannot enforce a promise to marry based on the consideration of "carnal connection." This court ruled that whether or not such consideration was a crime, neither of the

---

[86] *Bough and Bough v. Cantiveros and Hanopol,* 40 Phil. 210 (1919) [Per *J*. Malcolm, *En Banc*].

[87] *Pajuyo v. Court of Appeals,* G.R. No. 146364, June 3, 2004, 430 SCRA 492, 514-516 [Per *J*. Carpio, First Division]; *Top-Weld Manufacturing, Inc. v. ECED, S.A., et al.,* 222 Phil. 424 (1985) [Per *J*. Gutierrez, Jr., First Division].

[88] *See Liguez v. Court of Appeals,* 102 Phil. 577, 581 (1957) [Per *J*. J.B.L. Reyes, First Division].

[89] 7 Phil. 156 (1906) [Per *J*. Willard, Second Division].

parties can recover because the acts "were common to both parties."[90]

In *Bough v. Cantiveros,*[91] this court refused to enforce in favor of the guilty parties a contract of sale that was not only simulated but also executed to defeat any attempt by a husband to recover properties from his wife.

Another case, *Liguez v. Court of Appeals,*[92] involves a party's claim over a property based on a deed of donation executed in her favor when she was 16 years old. The heirs of the donor assailed the donation on the ground of having an illicit *causa.*

The donor in that case was found to have had sexual relations with the claimant. The donation was done to secure the claimant's continuous cohabitation with the donor, as well as to gratify the donor's sexual impulses. At the time of the donation, the donor was married to another woman. The donated property was part of their conjugal property.

This court held that the donation was founded on an illicit *causa.* While this court found the principle of *in pari delicto* inapplicable in that case given the claimant's minority at the time of donation, it had the occasion to say that the parties were barred "from pleading the illegality of the bargain either as a cause of action or as a defense."[93] The claimant was declared entitled to the donated property, without prejudice to the share and legitimes of the donor's forced heirs.

In the later case of *Villegas v. Rural Bank of Tanjay, Inc.,*[94] this court ruled that the petitioners in that case were not entitled to relief because they did not come to court with clean hands.

This court found that they "readily participated in a ploy to circumvent the Rural Banks Act and offered no objection when

---

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

[91] 40 Phil. 210 (1919) [Per *J*. Malcolm, *En Banc*].

[92] 102 Phil. 577 (1957) [Per *J*. J.B.L. Reyes, First Division].

[93] *Id*.

[94] 606 Phil. 427 (2009) [Per *J*. Nachura, Third Division].

their original loan of ₱350,000.00 was divided into small separate loans not exceeding ₱50,000.00 each."[95] They and respondent bank were *in pari delicto.* They could not be given affirmative relief against each other.[96] Hence, Spouses Villegas may not seek the annulment of the loan and mortgage contracts they voluntarily executed with respondent bank on the ground that these contracts were simulated to make it appear that the loans were sugar crop loans, allowing respondent bank to approve it pursuant to Republic Act No. 720, otherwise known as the Rural Banks Act.

The principle of *in pari delicto* admits exceptions. It does not apply when the result of its application is clearly against statutory law, morals, good customs, and public policy.[97]

In *Philippine Banking Corporation, representing the Estate of Justina Santos v. Lui She,*[98] this court refused to apply the principle of *in pari delicto.* Applying the principle meant that this court had to declare as valid between the parties a 50-year lease contract with option to buy, which was executed by a Filipino and a Chinese citizen. This court ruled that the policy to conserve land in favor of Filipinos would be defeated if the principle of *in pari delicto* was applied instead of setting aside the contracts executed by the parties.[99]

Petitioner in this case did not come to this court with clean hands. He was aware of the restrictions in his title when he executed the loan and mortgage contracts with respondent. He voluntarily executed the contracts with respondent despite this knowledge. He also availed himself of the benefits of the loan

---

[95] *Id*. at 437.

[96] *Id*.

[97] *See Pilipinas Hino, Inc. v. Court of Appeals,* 393 Phil. 1 (2000) [Per *J*. Kapunan, First Division], *citing Mendiola v. Court of Appeals,* 327 Phil. 1156 (1996) [Per *J*. Hermosisima, Jr., First Division]. *See also Rellosa v. Gaw Chee Hun,* 93 Phil. 827, 831 (1953) [Per *J*. Bautista Angelo, *En Banc*].

[98] 129 Phil. 526 (1967) [Per *J*. Castro, *En Banc*].

[99] *Id*.

and mortgage contract. He cannot now assail the validity of the mortgage contract to escape the obligations incurred because of it.[100]

Petitioner also failed to show that upholding the validity of the mortgage contract would be contrary to law, morals, good customs, and public policy.

Petitioner's contract with the National Housing Authority is not a law prohibiting the transfer or encumbrance of his property. It does not render subsequent transactions involving the property a violation of morals, good customs, and public policy. Violation of its terms does not render subsequent transactions involving the property void *ab initio.*[101] It merely provides the National Housing Authority with a cause of action to annul subsequent transactions involving the property.

IV

Petitioner argues that the property should be exempt from forced sale, attachment, and execution, based on Article 155 of the Family Code.[102] Petitioner and his family have been neighbors with respondent since 1992, before the execution of the mortgage contract.[103]

---

[100] *Sarmiento v. Salud,* 150-A Phil. 566 (1972) [Per *J.* J.B.L. Reyes, Second Division].

[101] *See also Del Rosario v. Bonga,* 402 Phil. 949 (2001) [Per *J.* Panganiban, Third Division].

[102] *Rollo,* p. 19.

CIVIL CODE, Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For non-payment of taxes;

(2) For debts incurred prior to the constitution of the family home;

(3) For debts secured by mortgages on the premises before or after such constitution; and

(4) For debts due to labourers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[103] *Rollo,* p. 20.

Even though petitioner's property has been constituted as a family home, it is not exempt from execution. Article 155 of the Family Code explicitly provides that debts secured by mortgages are exempted from the rule against execution, forced sale, or attachment of family home:

> Art. 155. The family home shall be exempt from execution, forced sale or attachment except:
>
> x x x x x x x x x
>
> (3) For debts secured by mortgages on the premises before or after such constitution[.]

Since petitioner's property was voluntarily used by him as security for a loan he obtained from respondent, it may be subject to execution and attachment.

V

The Court of Appeals correctly found that the interest rates of 5% or 10% per month imposed on petitioner's loan were unconscionable.

Parties are free to stipulate interest rates in their loan contracts in view of the suspension of the implementation of the Usury Law ceiling on interest effective January 1, 1983.[104]

The freedom to stipulate interest rates is granted under the assumption that we have a perfectly competitive market for loans where a borrower has many options from whom to borrow. It assumes that parties are on equal footing during bargaining and that neither of the parties has a relatively greater bargaining power to command a higher or lower interest rate. It assumes that the parties are equally in control of the interest rate and equally have options to accept or deny the other party's proposals. In other words, the freedom is granted based on the premise that parties arrive at interest rates that they are willing but are

---

[104] *See Toledo v. Hyden,* 652 Phil. 70 (2010) [Per *J.* Del Castillo, First Division], *citing* Central Bank Circular No. 905 s. 1982; *Almeda v. Court of Appeals,* 326 Phil. 309 (1996) [Per *J.* Kapunan, First Division].

not compelled to take either by force of another person or by force of circumstances.[105]

However, the premise is not always true. There are imperfections in the loan market. One party may have more bargaining power than the other. A borrower may be in need of funds more than a lender is in need of lending them. In that case, the lender has more commanding power to set the price of borrowing than the borrower has the freedom to negotiate for a lower interest rate.

Hence, there are instances when the state must step in to correct market imperfections resulting from unequal bargaining positions of the parties.

Article 1306 of the Civil Code limits the freedom to contract to promote public morals, safety, and welfare:[106]

> Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

In stipulating interest rates, parties must ensure that the rates are neither iniquitous nor unconscionable. Iniquitous or unconscionable interest rates are illegal and, therefore, void for being against public morals.[107] The lifting of the ceiling on

---

[105] *Cf.* the definition of fair market value: "that sum of money which a person desirous, but is not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property." In *Association of Small Landowners v. Secretary of Agrarian Reform,* 256 Phil. 777 (1989) [Per *J*. Cruz, *En Banc*], *citing JM Tuazon & Co. v. Land Tenure Administration,* G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per *J*. Fernando, Second Division].

[106] *Bough and Bough v. Cantiveros and Hanopol,* 40 Phil. 210 (I919) [Per *J*. Malcolm, *En Banc*].

[107] *Castro v. Tan,* 620 Phil. 239 (2009) [Per *J*. Del Castillo, Second Division]. *See also Svendsen v. People,* 570 Phil. 243 (2008) [Per *J*. Carpio-Morales, Second Division], *citing Solangon v. Salazar,* 412 Phil. 816, 822 (2001) [Per *J*. Sandoval-Gutierrez, Third Division]; *Ruiz v. Court of Appeals,* 449 Phil. 419 (2003) [Per *J*. Puno, Third Division].

interest rates may not be read as "grant[ing] lenders *carte blanche* [authority] to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets."[108]

Voluntariness of stipulations on interest rates is not sufficient to make the interest rates valid.[109] In *Castro v. Tan:*[110]

> The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.[111]

Thus, even if the parties voluntarily agree to an interest rate, courts are given the discretionary power to equitably reduce it if it is later found to be iniquitous or unconscionable.[112] Courts approximate what the prevailing market rate would have been under the circumstances had the parties had equal bargaining power.

An interest rate is not inherently conscionable or unconscionable. Interest rates become unconscionable in light of the context in which they were imposed or applied. In *Medel v. Court of Appeals,*[113] this Court ruled that the stipulated interest of 5.5% or 66% per annum was unconscionable and contrary

---

[108] *Svendsen v. People,* 412 Phil. 816, 822 (2001) [Per *J*. Sandoval-Gutierrez, Third Division]; *Almeda v. Court of Appeals,* 326 Phil. 309, 319 (1996) [Per *J*. Kapunan, First Division].

[109] *Menchavez v. Bermudez,* G.R. No. 185368, October 11, 2012, 684 SCRA 168 [Per *J*. Velasco, Jr., Third Division].

[110] 620 Phil. 239 (2009) [Per *J*. Del Castillo, Second Division].

[111] *Id*. at 242-243.

[112] *Menchavez v. Bermudez,* G.R. No. 185368, October 11, 2012, 684 SCRA 168, 178-179 [Per *J*. Velasco, Jr., Third Division].

[113] 359 Phil. 820 (1998) (Per *J*. Pardo, Third Division].

to morals. It was declared void. This court reduced the interest rate to 1% per month or 12% per annum.[114]

This court also ruled that the interest rates of 3%, 5%, and 10% per month were unconscionable, thus justifying the need to reduce the interest rates to 12% per annum.[115]

On the other hand, despite rulings that interest rates of 3% and 5% per month are unconscionable, this court in *Toledo v. Hyden*[116] found that the interest rate of 6% to 7% per month was *not* unconscionable. This court noted circumstances that differentiated that case from *Medel* and found that the borrower in *Toledo* was not in dire need of money when she obtained a loan; this implied that the interest rates were agreed upon by the parties on equal footing. This court also found that it was the borrower in *Toledo* who was guilty of inequitable acts:

> Noteworthy is the fact that in *Medel,* the defendant-spouses were never able to pay their indebtedness from the very beginning and when their obligations ballooned into a staggering sum, the creditors filed a collection case against them. *In this case, there was no urgency of the need for money on the part of Jocelyn, the debtor, which compelled her to enter into said loan transactions. She used the money from the loans to make advance payments for prospective clients of educational plans offered by her employer. In this way, her sales production would increase, thereby entitling her to 50% rebate on her sales. This is the reason why she did not mind the 6% to 7% monthly interest.* Notably too, a business transaction of this nature between Jocelyn and Marilou continued for more than five years. Jocelyn religiously paid the agreed amount of interest until she ordered for stop payment on some of the checks issued to Marilou. *The checks were in fact sufficiently funded when she ordered the stop payment and then filed a case questioning the imposition of a 6% to 7% interest*

---

[114] *Id*.

[115] *Ruiz v. Court of Appeals,* 449 Phil. 419 (2003) [Per *J*. Puno, Third Division]; *Castro v. Tan,* 620 Phil. 239 (2009) [Per *J*. Del Castillo, Second Division]; *Menchavez v. Bermudez,* G.R. No. 185368, October 11, 2012, 684 SCRA 168 [Per *J*. Velasco, Jr., Third Division]; *Svendsen v. People,* 412 Phil. 816 (2001) [Per *J*. Sandoval-Gutierrez, Third Division].

[116] 652 Phil. 70 (2010) [Per *J*. Del Castillo, First Division].

*rate for being allegedly iniquitous or unconscionable and, hence, contrary to morals.*

*It was clearly shown that before Jocelyn availed of said loans, she knew fully well that the same carried with it an interest rate of 6% to 7% per month, yet she did not complain. In fact, when she availed of said loans, an advance interest of 6% to 7% was already deducted from the loan amount, yet she never uttered a word of protest.*

*After years of benefiting from the proceeds of the loans bearing an interest rate of 6% to 7% per month and paying for the same,* Jocelyn cannot now go to court to have the said interest rate annulled on the ground that it is excessive, iniquitous, unconscionable, exorbitant, and absolutely revolting to the conscience of man. "This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue."

*We are convinced that Jocelyn did not come to court for equitable relief with equity or with clean hands. It is patently clear from the above summary of the facts that the conduct of Jocelyn can by no means be characterized as nobly fair, just, and reasonable.* This Court likewise notes certain acts of Jocelyn before filing the case with the RTC. *In September 1998, she requested Marilou not to deposit her checks as she can cover the checks only the following month. On the next month, Jocelyn again requested for another extension of one month. It turned out that she was only sweet-talking Marilou into believing that she had no money at that time. But as testified by Serapio Romarate, an employee of the Bank of Commerce where Jocelyn is one of their clients, there was an available balance of ₱276,203.03 in the latter's account and yet she ordered for the stop payments of the seven checks which can actually be covered by the available funds in said account.* She then caught Marilou by surprise when she surreptitiously filed a case for declaration of nullity of the document and for damages.[117] (Emphases supplied, citations omitted)

---

[117] *Id*. at 79-81.

Under the circumstances of this case, we find no reason to uphold the stipulated interest rates of 5% to 10% per month on petitioner's loan. Petitioner obtained the loan out of extreme necessity. As pointed out by respondent, the property would have been earlier foreclosed by the National Housing Authority if not for the loan. Moreover, it would be unjust to impose a heavier burden upon petitioner, who would already be losing his and his family's home. Respondent would not be unjustly deprived if the interest rate is reduced. After all, respondent still has the right to foreclose the property. Thus, we affirm the Court of Appeals Decision to reduce the interest rate to 1% per month or 12% per annum.

However, we modify the rates in accordance with the guidelines set forth in *Nacar v. Gallery Frames:*[118]

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or

---

[118] G.R. No. 189871, August 13, 2013,703 SCRA 439 [Per *J.* Peralta, *En Banc*].

extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[119]

Thus, the interest rate for petitioner's loan should be further reduced to 6% per annum from July 1, 2013 until full satisfaction.

**WHEREFORE,** the Petition is **DENIED.** The Court of Appeals Decision dated October 26, 2011 and its Resolution dated March 8, 2012 are **AFFIRMED.** The interest rate for the loan of ₱600,000.00 is further reduced to 6% per annum from July 1, 2013 until fully paid.

**SO ORDERED.**

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

---

[119] *Id*. at 457-458.

**SECOND DIVISION**

[G.R. No. 201310. January 11, 2016]

**MARK REYNALD MARASIGAN *y* DE GUZMAN,** *petitioner, vs.* **REGINALD FUENTES *ALIAS* "REGIE," ROBERT CALILAN *ALIAS* "BOBBY," and ALAIN DELON LINDO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; FACTUAL FINDINGS ARE GENERALLY BINDING AND CONCLUSIVE ON THE SUPREME COURT; EXCEPTIONS.—** It is basic that petitions for review on certiorari under Rule 45 may only raise pure questions of law and that findings of fact are generally binding and conclusive on this court. Nevertheless, there are recognized exceptions that will allow this court to overturn the factual findings confronting it. These exceptions are the following: "(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record." Moreover, in Rule 45 petitions, which are appeals from petitions for certiorari under Rule 65, the appealed ruling may be reversed and its factual moorings rejected if it can be shown that, in rendering the act originally subject of the Rule 65 petition, "the tribunal acted capriciously and

whimsically or in total disregard of evidence material to the controversy[.]"

**2. CRIMINAL LAW; REVISED PENAL CODE; ATTEMPTED MURDER; INTENT TO KILL; THE FACT THAT THE VICTIM WAS ABLE TO PARRY AN ATTEMPTED, POSSIBLY FATAL BLOW, DOES NOT NEGATE ANY HOMICIDAL INTENT.—** In *Rivera v. People*, this court noted that the fact that the wounds sustained by the victim were merely superficial and not fatal did not negate the liability of the accused for attempted murder. x x x The circumstances in *Rivera* are starkly similar with (though not entirely the same as) those in this case. As in *Rivera*, several assailants took part in pummeling petitioner, and efforts were made to hit his head with stones or pieces of hollow blocks. A difference is that, in this case, petitioner managed to parry an attempted blow, thereby causing a fracture in his right hand, instead of a more serious and, possibly fatal, injury on his head. In any case, the fact that petitioner was successful in blocking the blow with his hand does not, in and of itself, mean that respondents could not have possibly killed him. It does not negate any homicidal intent. It remains that respondent Fuentes attempted to hit petitioner on the head with a hollow block while respondents Calilan and Lindo made efforts to restrain petitioner.

**3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TAKING ADVANTAGE OF SUPERIOR STRENGTH; APPRECIATED IN CASE AT BAR.—** There is also reasonable basis for appreciating how the attack on petitioner was made with respondents taking advantage of their numerical superiority. From x x x [the witnesses' sworn statements], it is discernible that respondents took advantage of their superior strength or otherwise employed means to weaken petitioner's defense. With this qualifying circumstance, there is ample basis for pursuing respondents' prosecution for murder, albeit not in its consummated stage.

**4. ID.; ID.; CONSPIRACY; MAY BE INFERRED FROM THE ACTS OF THE PERPETRATORS.—** [I]t is apparent that respondents acted out of a common design and, thus, in conspiracy. It is settled that direct proof of conspiracy is not imperative and that conspiracy may be inferred from acts of the perpetrators. x x x Thus, it has been held that a perpetrator's act of holding the victim's hand while another perpetrator is

striking a blow is indicative of conspiracy x x x. In this case, petitioner averred that respondents Calilan and Lindo took hold of each of his arms while respondent Fuentes was about to strike him with a hollow block. It is, therefore, apparent that all three of them acted out of a common design as is indicative of a conspiracy.

**5. ID.; ID.; STAGES OF COMMISSION OF FELONIES; ATTEMPTED STAGE; ELEMENTS.—** We sustain the conclusion of Undersecretary Malenab-Hornilla that there is basis for prosecuting respondents for murder in its attempted, and not in its frustrated, stage. The stages of commission of felonies are provided in Article 6 of the Revised Penal Code x x x. *Rivera v. People* discussed the elements that are determinative of a felony's having reached (only) the attempted stage: "The essential elements of an attempted felony are as follows: 1. The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. The first requisite of an attempted felony consists of two elements, namely: (1) That there be external acts; (2) Such external acts have direct connection with the crime intended to be committed." In this case, petitioner alleged that respondents coordinated in assaulting him and that this assault culminated in efforts to hit his head with a stone or hollow block. Had respondents been successful, they could have dealt any number of blows on petitioner. Each of these could have been fatal, or, even if not individually so, could have, in combination, been fatal. That they were unable to inflict fatal blows was only because of the timely arrival of neighbors who responded to the calls for help coming from petitioner and witnesses Marcelo Maaba, Lauro M. Agulto, and Gregoria F. Pablo.

## APPEARANCES OF COUNSEL

*Vaflor-Fabroa Accounting & Law Consultancy Services* for petitioner.

*Lopez & Associates* for respondents.

## D E C I S I O N

**LEONEN, *J.*:**

This resolves a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court praying that (1) the August 19, 2011 Decision[2] and the February 21, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 113116 be reversed and set aside and (2) the September 2, 2009 Resolution[4] rendered by then Department of Justice Undersecretary Linda L. Malenab-Hornilla (Undersecretary Malenab-Hornilla) be reinstated.[5]

The assailed August 19, 2011 Decision of the Court of Appeals dismissed the Petition for Certiorari under Rule 65 of the Rules of Court filed by petitioner Mark Reynald Marasigan (Marasigan) and affirmed the February 8, 2010 Resolution[6] of then Department of Justice Secretary Agnes VST Devanadera (Secretary Devanadera).[7] The assailed February 21, 2012 Resolution of the Court of Appeals denied Marasigan's Motion for Reconsideration.[8]

The February 8, 2010 Resolution of Secretary Agnes VST Devanadera reversed and set aside Undersecretary Linda L. Malenab-Hornilla's September 2, 2009 Resolution and dismissed

---

[1] *Rollo*, pp. 11-79.

[2] *Id*. at 86-92. The Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guariña III (Chair) and Apolinario D. Bruselas, Jr. of the Eighth Division.

[3] *Id*. at 82-84. The Resolution was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Apolinario D. Bruselas, Jr. (Acting Chair) and Samuel H. Gaerlan of the Special Former Eighth Division.

[4] *Id*. at 104-109.

[5] *Id*. at 76.

[6] *Id*. at 93-103.

[7] *Id*. at 92.

[8] *Id*. at 83.

the criminal complaints against respondents Reginald Fuentes (Fuentes) and Alain Delon Lindo (Lindo) and found probable cause to charge respondent Robert Calilan (Calilan) with only less serious physical injuries.[9] Undersecretary Malenab-Hornilla's September 2, 2009 Resolution partially granted Marasigan's Petition for Review and directed the filing of informations for attempted murder against Fuentes, Calilan, and Lindo.[10]

Per Marasigan's allegations, on December 20, 2006 at about 3:00 a.m., while he was walking on his way home along Hebrew Street, Adelina I Subdivision, Barangay San Antonio, San Pedro, Laguna, and after he had passed by Fuentes' house where some merrymaking had been ongoing, Marasigan felt someone throw an object at him from behind. Turning around, he saw Fuentes, who, upon noticing that he had been seen, disappeared. A witness, Jefferson Pablo (Pablo), spoke with Marasigan and confirmed that it was Fuentes who threw an object at him.[11]

While he and Pablo were speaking, Fuentes reappeared with Calilan and Lindo, as well as with another unidentified individual. Fuentes suddenly punched Marasigan on the face, making his nose bleed. Calilan and Lindo also hit him while their unidentified companion sought to stop them. Fuentes picked up a stone (*i.e.*, piece of a hollow block) and attempted to hit Marasigan's head with it. Marasigan parried the stone with his hand, causing his hand to fracture. Fuentes again picked up the stone. Lindo and Calilan took hold of each of Marasigan's arms. Several more men who were in Fuentes' home joined in the assault.[12]

Sensing that Fuentes, Calilan, and Lindo were determined to crush him with hollow blocks from a nearby construction site, Marasigan shouted for help. Gregoria Pablo, Jefferson Pablo's mother, came rushing out of their house and tried to

---

[9] *Id*. at 102.

[10] *Id*. at 109.

[11] *Id*. at 18 and 122-124.

[12] *Id*.

pacify Fuentes, Calilan, and Lindo. They, however, continued to assault Marasigan. It was only upon the arrival of neighbors Marcelo Maaba and Lauro Agulto that Fuentes, Calilan, and Lindo ceased their assault and fled.[13]

Assisted by his parents, Marasigan submitted himself to two (2) medico-legal examinations, and an x-ray examination. He also filed reports/complaints in the barangay hall and police station. On December 28, 2006, he formally filed a criminal complaint for frustrated murder against Fuentes, Calilan, Lindo, and one John Doe before Assistant Provincial Prosecutor Milaflor Tan Mancia.[14]

After conducting preliminary investigation, Assistant Provincial Prosecutor Christopher R. Serrano (Assistant Provincial Prosecutor Serrano) issued the Resolution[15] dated August 16, 2007 finding probable cause for charging Fuentes and Calilan with less serious physical injuries and clearing Lindo of any liability.[16] He reasoned that there were no qualifying circumstances to support a charge for murder. He added that the injuries suffered by Marasigan, including his fractured finger, required a healing period of not more than 30 days.[17]

Aggrieved, Marasigan filed a Petition for Review before the Department of Justice. He argued that the medical findings made on him as well as the qualifying circumstance of abuse of superior strength justified prosecution for frustrated murder. He added that Lindo's acts were unambiguous and indicated his participation in a design to kill him.[18]

In the Resolution dated September 2, 2009, Undersecretary Malenab-Hornilla partially granted Marasigan's Petition for

---

[13] *Id*. at 19 and 123-124.

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

[15] *Id*. at 111-116.

[16] *Id*. at 116.

[17] *Id*. at 114.

[18] *Id*. at 21-25.

Review and ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo. Undersecretary Malenab-Hornilla faulted Assistant Provincial Prosecutor Serrano for relying on the medico-legal findings to the exclusion of other evidence. She reasoned that Fuentes, Calilan, and Lindo's acts, as recounted by the witnesses Gregoria Pablo, Marcelo Maaba, and Lauro Agulto, indicated a design to kill Marasigan, which was only stymied by these witnesses' arrival.[19] She added, however, that precisely because of the arrival of these witnesses, Fuentes, Calilan, and Lindo failed to complete "all the punching, kicking and stoning needed to kill [Marasigan]."[20] Thus, they could not be charged with frustrated murder, but only with attempted murder.[21]

Fuentes, Calilan, and Lindo filed their Motion for Reconsideration to Undersecretary Malenab-Hornilla's Resolution.[22]

While the Motion for Reconsideration of Fuentes, Calilan, and Lindo was pending, the Provincial Prosecutor's Office filed the Information[23] for attempted murder before Branch 93, Regional Trial Court, San Pedro, Laguna.

On February 8, 2010, Secretary Devanadera issued a Resolution on Fuentes, Calilan, and Lindo's Motion for Reconsideration. This Resolution absolved Fuentes and Lindo of liability and deemed that Calilan could only be charged with less serious physical injuries. Secretary Devanadera cited with approval Assistant Provincial Prosecutor Serrano's statement in his own Resolution that there was no sufficient showing, or "clear and convincing evidence to prove that the herein respondents collectively intended to kill [Marasigan]."[24]

---

[19] *Id*. at 107.

[20] *Id*. at 108.

[21] *Id*.

[22] *Id*. at 26.

[23] *Id*. at 134.

[24] *Id*. at 99.

Aggrieved, Marasigan filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals.[25]

In its assailed August 19, 2011 Decision, the Court of Appeals dismissed Marasigan's Petition for Certiorari. In its assailed February 21, 2012 Resolution, the Court of Appeals denied Marasigan's Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the sole issue of the proper crime, if any, for which any or all of the respondents must stand trial.

I

Petitioner comes to us via a Petition for Review on Certiorari under Rule 45 of the Rules of Court following the denial by the Court of Appeals of his Petition for Certiorari under Rule 65, the errors which are properly correctible by each remedy are settled:

> In a petition for certiorari, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or via a petition for review on certiorari in this Court under Rule 45 of the Rules of Court. Certiorari will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of

---

[25] *Id*. at 86.

judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[26]

The present, Rule 45 Petition calls upon us to examine whether the Court of Appeals committed an error of judgment in resolving the question of whether Secretary Devanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction in concluding the respondents ought to stand trial only for the charge of less serious physical injuries. In her capacity as Secretary of Justice, Secretary Devanadera was well within her jurisdiction to rule on the Petition for Review filed with the Department of Justice. She is, however, not at liberty to flagrantly disregard the evidence and the records and to insist on conclusions that stray dismally far from what the evidence warrants. Neither is she at liberty to disregard evidentiary principles established in jurisprudence.

It is basic that petitions for review on certiorari under Rule 45 may only raise pure questions of law[27] and that findings of fact are generally binding and conclusive on this court. Nevertheless, there are recognized exceptions that will allow this court to overturn the factual findings confronting it. These exceptions are the following:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

---

[26] *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, as cited in *Ligot v. Republic*, G.R. No. 176944, March 6, 2013. 692 SCRA 509, 528. [Per J. Brion, Second Division].

[27] RULES OF CIVIL PROCEDURE, Rule 45, Sec. 1:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, 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 shall raise only questions of law which must be distinctly set forth.

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[28]

Moreover, in Rule 45 petitions, which are appeals from petitions for certiorari under Rule 65, the appealed ruling may be reversed and its factual moorings rejected if it can be shown that, in rendering the act originally subject of the Rule 65 petition, "the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy[.]"[29]

A careful review of this case and of the evidence that were available for the prosecutors' and the Department of Justice's appreciation will reveal that there was a gross misapprehension of facts on the part of Assistant Provincial Prosecutor Serrano and Secretary Devanadera. It was, therefore, grave abuse of discretion for Secretary Devanadera to conclude that respondent Calilan may only be prosecuted for the crime of less serious

---

[28] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660 [Per *J.* Carpio Morales, Third Division].

[29] *Odango v. National Labor Relations Commission*, G.R. No. 147420, June 10, 2004, 431 SCRA 633, 640 [Per *J.* Carpio, First Division], *citing Sajonas v. National Labor Relations Commission*, 262 Phil. 201 (1990) [Per *J.* Regalado, Second Division].

physical injuries while his co-respondents, Fuentes and Lindo, may not be prosecuted at all.

II

Secretary Devanadera was in grave error in citing with approval Assistant Provincial Prosecutor Serrano's having faulted petitioner for lack of "sufficient s[h]owing, [o]r ***clear and convincing evidence*** to prove that the herein respondents collectively intended to kill [petitioner]."[30]

Assistant Provincial Prosecutor Serrano's Resolution was issued pursuant to a preliminary investigation. Preliminary investigation "ascertains whether the offender should be held for trial or be released."[31] It inquires only into the existence of probable cause: a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on "clear and convincing evidence":

> Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.
>
> A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. ***It need not be based on clear and convincing evidence*** *of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.* In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. *He relies on common sense.* What is determined is whether there is sufficient ground to engender a

---

[30] *Rollo*, p. 99, emphasis supplied.

[31] *AAA v. Judge Carbonell*, 551 Phil. 936, 948 (2007) [Per *J.* Ynares-Santiago, Third Division].

well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[32] (Emphasis supplied, citations omitted)

III

Secretary Devanadera is of the conclusion that "[t]he evidence is *equivocal* on whether respondents had any homicidal intent in engaging in a scuffle with the complainant."[33] In so doing, she makes much of how "[t]he physical evidence starkly fails to demonstrate any homicidal motive[.]"[34] She goes so far as to virtually discredit the other available evidence vis-à-vis physical evidence, saying that "[p]hysical evidence is evidence of the highest order and speaks more eloquently than a hundred witnesses."[35]

Specifically, Secretary Devanadera pointed out that the medico-legal findings[36] indicated that petitioner sustained nothing more than contusions and abrasions;[37] and that while he suffered a fracture on the metacarpal bone on the second digit of his right hand,[38] it was found that his injuries would take less than 30 days to heal.[39]

We disagree with this appreciation.

In *Rivera v. People*,[40] this court noted that the fact that the wounds sustained by the victim were merely superficial and not fatal did not negate the liability of the accused for attempted

---

[32] *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518-519 (2008) [Per *J.* Chico-Nazario, Third Division].

[33] *Rollo*, p. 99, emphasis supplied.

[34] *Id*.

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

[36] *Id*. at 130 and 133.

[37] *Id*. at 99.

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

[39] *Id*. at 99.

[40] 515 Phil. 824 (2006) [Per *J.* Callejo, Sr., First Division].

murder.[41] The attack on the victim in *Rivera* was described as follows:

> In the present case, the prosecution mustered the requisite quantum of evidence to prove the intent of petitioners to kill Ruben. Esmeraldo and Ismael pummeled the victim with fist blows. Even as Ruben fell to the ground, unable to defend himself against the sudden and sustained assault of petitioners, Edgardo hit him three times with a hollow block. Edgardo tried to hit Ruben on the head, missed, but still managed to hit the victim only in the parietal area, resulting in a lacerated wound and cerebral contusions.[42]

The circumstances in *Rivera* are starkly similar with (though not entirely the same as) those in this case. As in *Rivera*, several assailants took part in pummeling petitioner, and efforts were made to hit his head with stones or pieces of hollow blocks. A difference is that, in this case, petitioner managed to parry an attempted blow, thereby causing a fracture in his right hand, instead of a more serious and, possibly fatal, injury on his head.

In any case, the fact that petitioner was successful in blocking the blow with his hand does not, in and of itself, mean that respondents could not have possibly killed him. It does not negate any homicidal intent. It remains that respondent Fuentes attempted to hit petitioner on the head with a hollow block while respondents Calilan and Lindo made efforts to restrain petitioner.

There is also reasonable basis for appreciating how the attack on petitioner was made with respondents taking advantage of their numerical superiority. Relevant portions of the witnesses' sworn statements are reproduced, as follows:

1. Marcelo T. Maaba

> Na, pagkalabas ko ay nakita ko na may binubugbog ang apat na katao at nakilala ko ang isa na nagngangalang BOBBY CALILAN, nasa hustong gulang, binata, at dating nakatira sa Block 11[,] Adelina I, San Antonio, San Pedro,

---

[41] *Id*. at 833.

[42] *Id*. at 832-833.

Laguna, at ang binubugbog nila aysi [sic] Mark Reynald Marasigan.

Na, sinigawan po namin (kasama si Lauro Agulto, Gregorio [sic] at Jeff Pablo) ang mga nambubugbog kaya[']t agad naman nila itong iniwan si Mark na duguan ang mukha at damit.[43]

2. Lauro M. Agulto

Maya-maya pa ay biglang sumugod ang grupo [ni] BOBBY CALILAN, nasa hustong gulang, binata at dating nakatira sa Block 11[,] Adelina I, kasama ang pitong iba pa na hindi ko kilala at pinag-gugulpi si Mark hanggang sa bumagsak ito. Lumapit si Ate Boyang sa mga nanggugulpi upang umawat ngunit nagulat ito sa biglang pagdami ng grupo ni Bobby kaya't napaatras si Ate Boyang at na out-balance at napatumba. Sa tagpong ito ay lumabas ako upang tulungan si Ate Boyang;

Na, pagkalabas ko ay nakatagilid pahiga si Mark sa kalsada at nang papalapit na ako ay tinadyakan pa ito ng isa pa, nakita ko rin na *pinagtutulungan* itong si Mark suntukin at sipain ng grupo ni Bobby kasama ang pitong iba pa.[44] (Emphasis supplied)

3. Gregoria F. Pablo

Na, noong mga ganap na ika 3:00 ng madaling araw, nakita ko ang anak ng aking kapitbahay na si Macmac (M[a]rk Reynald G. Marasigan) na kausap ang aking anak na si Jeff. Narinig ko na siya ay binato ng napakalaki sa likod at matinding nasaktan. Noon ay nasa tapat ng bahay ang aking anak na magsisimbang gabi. Lumabas ako at alamin ang pangyayari at yayaing pumasok na sa loob ng aming bahay upang gamutin si Macmac. Subalit bigla na lamang su[m]ugod [a]ng apat na lalaki at sabay sabay na sinaktan si Macmac. Marami pang nagdatingan sumusugod na matataas at malalaking kalalakihan na tumulong pa sa pambubugbog kay Macmac. Naglakas loob ako na umawat dahil sa pag aakalang

---

[43] *Rollo*, p. 128.

[44] *Id*. at 125.

> igagalang nila ako. Ngunit ako ay kanilang itinulak na sanhi ng aking pagkatilapon at pagkasubsub at nasugatan. . . . Nakita ko na balak na nilang patayin si Macmac dahil habang pinipigil ko ang iba, ay nakita ko na hinihila pa siya ng mga anim o pitong malalaking kalalakihan habang nakahandusay na at sabay-sabay pa siyang sinasaktan.[45]

From these, it is discernible that respondents took advantage of their superior strength or otherwise employed means to weaken petitioner's defense. With this qualifying circumstance, there is ample basis for pursuing respondents' prosecution for murder, albeit not in its consummated stage.

Similarly, it is apparent that respondents acted out of a common design and, thus, in conspiracy.

It is settled that direct proof of conspiracy is not imperative and that conspiracy may be inferred from acts of the perpetrators. As explained in *People v. Amodia*:[46]

> Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. It may be proved by direct or circumstantial evidence.
>
> Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime, or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential

---

[45] *Id*. at 129.

[46] 602 Phil. 889 (2009) [Per *J*. Brion, Second Division].

that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[47] (Citations omitted)

Thus, it has been held that a perpetrator's act of holding the victim's hand while another perpetrator is striking a blow is indicative of conspiracy, as *People v. Amodia*, citing *People v. Manalo*,[48] notes:

In *People v. Manalo,* we declared that the act of the appellant in holding the victim's right hand while the latter was being stabbed constituted sufficient proof of conspiracy:

> Indeed, the act of the appellant of holding the victim's right hand while the victim was being stabbed by Dennis shows that he concurred in the criminal design of the actual killer. If such act were separate from the stabbing, appellant's natural reaction should have been to immediately let go of the victim and flee as soon as the first stab was inflicted. But appellant continued to restrain the deceased until Dennis completed his attack.[49] (Citation omitted)

In this case, petitioner averred that respondents Calilan and Lindo took hold of each of his arms while respondent Fuentes was about to strike him with a hollow block. It is, therefore, apparent that all three of them acted out of a common design as is indicative of a conspiracy.

We sustain the conclusion of Undersecretary Malenab-Hornilla that there is basis for prosecuting respondents for murder in its attempted, and not in its frustrated, stage.

The stages of commission of felonies are provided in Article 6 of the Revised Penal Code:

---

[47] *Id*. at 911-912.

[48] 428 Phil. 682 (2002) [Per *C.J*. Davide, Jr., First Division].

[49] *People v. Amodia*, 602 Phil. 889, 913 (2009) [Per *J*. Brion, Second Division].

ARTICLE 6. *Consummated, Frustrated, and Attempted Felonies*. — Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

*Rivera v. People* discussed the elements that are determinative of a felony's having reached (only) the attempted stage:

The essential elements of an attempted felony are as follows:

1. The offender commences the commission of the felony directly by overt acts;

2. He does not perform all the acts of execution which should produce the felony;

3. The offender's act be not stopped by his own spontaneous desistance;

4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

The first requisite of an attempted felony consists of two elements, namely:

(1) That there be external acts;

(2) Such external acts have direct connection with the crime intended to be committed.[50] (Citations omitted)

In this case, petitioner alleged that respondents coordinated in assaulting him and that this assault culminated in efforts to hit his head with a stone or hollow block. Had respondents been

---

[50] *Rivera v. People*, 515 Phil. 824, 833-834 (2006) [Per *J*. Callejo, Sr., First Division].

successful, they could have dealt any number of blows on petitioner. Each of these could have been fatal, or, even if not individually so, could have, in combination, been fatal. That they were unable to inflict fatal blows was only because of the timely arrival of neighbors who responded to the calls for help coming from petitioner and witnesses Marcelo Maaba, Lauro M. Agulto, and Gregoria F. Pablo.

**WHEREFORE**, the Petition for Review on Certiorari is **GRANTED**. The August 19, 2011 Decision and the February 21, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 113116 are **REVERSED and SET ASIDE**. The September 2, 2009 Resolution rendered by former Department of Justice Undersecretary Linda L. Malenab-Hornilla is **REINSTATED**.

The Provincial Prosecutor of Laguna is directed to enforce the same September 2, 2009 Resolution with dispatch.

**SO ORDERED**.

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

---

**SECOND DIVISION**

[G.R. No. 203882. January 11, 2016]

**LORELEI O. ILADAN,** *petitioner, vs.* **LA SUERTE INTERNATIONAL MANPOWER AGENCY, INC., and DEBBIE LAO,** *respondents.*

**SYLLABUS**

**LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; IT IS INCUMBENT UPON AN**

**EMPLOYEE TO PROVE THAT HIS RESIGNATION IS NOT VOLUNTARY; NOT ESTABLISHED IN CASE AT BAR.—** In illegal dismissal cases, the employer has the burden of proving that the employee's dismissal was legal. However, to discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment. x x x It is a settled jurisprudence that it is incumbent upon an employee to prove that his resignation is not voluntary. However, Iladan did not adduce any competent evidence to prove that respondents used force and threat. x x x In the instant case, Iladan executed a resignation letter in her own handwriting. She also accepted the amount of ₱35,000.00 as financial assistance and executed an Affidavit of Release, Waiver and Quitclaim and an Agreement, as settlement and waiver of any cause of action against respondents. The affidavit of waiver and the settlement were acknowledged/subscribed before Labor Attache Romulo on August 6, 2009, and duly authenticated by the Philippine Consulate. An affidavit of waiver duly acknowledged before a notary public is a public document which cannot be impugned by mere self-serving allegations. Proof of an irregularity in its execution is absolutely essential. The Agreement likewise bears the signature of Conciliator-Mediator Diaz. Thus, the signatures of these officials sufficiently prove that Iladan was duly assisted when she signed the waiver and settlement. Concededly, the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. In this case, no such evidence was presented. Besides, "[t]he Court has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import." Absent any extant and clear proof of the alleged coercion and threats Iladan allegedly received from respondents that led her to terminate her employment relations with respondents, it can be concluded that Iladan resigned voluntarily.

**APPEARANCES OF COUNSEL**

*Joselito R. Rance* for petitioner.
*Neal J. Chua* for respondents.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

By this Petition for Review on *Certiorari,*[1] petitioner Lorelei O. Iladan (Iladan) assails the May 16, 2012 Decision[2] and October 4, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 119903, which reversed the February 23, 2011[4] and March 31, 2011[5] Resolutions of the National Labor Relations Commission (NLRC) and consequently dismissed her complaint for illegal dismissal against respondents La Suerte International Manpower Agency, Inc. (La Suerte) and its President and General Manager Debbie Lao (Lao).

***Factual Antecedents***

La Suerte is a recruitment agency duly authorized by the Philippine Overseas Employment Administration (POEA) to deploy workers for overseas employment. On March 20, 2009, La Suerte hired Iladan to work as a domestic helper in Hongkong for a period of two years with a monthly salary of HK$3,580.00.[6] On July 20, 2009, Iladan was deployed to her principal employer in Hongkong, Domestic Services International (Domestic Services), to work as domestic helper for Ms. Muk Sun Fan.

On July 28, 2009 or barely eight days into her job, Iladan executed a handwritten resignation letter.[7] On August 6, 2009,

---

[1] *Rollo,* pp. 3-33.

[2] CA *rollo,* pp. 388-402; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda.

[3] *Id*. at 433-435.

[4] NLRC records, Vol. 1, pp. 288-306; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese.

[5] *Id*. at 340-341.

[6] *Id*. at 31-34.

[7] *Id*. at 35.

in consideration of ₱35,000.00 financial assistance given by Domestic Services, Iladan signed an Affidavit of Release, Waiver and Quitclaim[8] duly subscribed before Labor Attache Leonida V. Romulo (Labor Attache Romulo) of the Philippine Consulate General in Hongkong. On the same date, an Agreement,[9] was signed by Iladan, Conciliator-Mediator Maria Larisa Q. Diaz (Conciliator-Mediator Diaz) and a representative of Domestic Services, whereby Iladan acknowledged that her acceptance of the financial assistance would constitute as final settlement of her contractual claims and waiver of any cause of action against respondents and Domestic Services. The Agreement was also subscribed before Labor Attache Romulo. On August 10, 2009, Iladan returned to the Philippines.

Thereafter, or on November 23, 2009, Iladan filed a Complaint[10] for illegal dismissal, refund of placement fee, payment of salaries corresponding to the unexpired portion of the contract, as well as moral and exemplary damages, against respondents. Iladan alleged that she was forced to resign by her principal employer, threatened with incarceration; and that she was constrained to accept the amount of ₱35,000.00 as financial assistance as she needed the money to defray her expenses in going back to the Philippines. She averred that the statements in the Affidavit of Release, Waiver and Quitclaim and the Agreement were not fully explained in the language known to her; that they were considered contracts of adhesion contrary to public policy; and were issued for an unreasonable consideration. Iladan claimed to have been illegally dismissed and entitled to backwages corresponding to the unexpired portion of the contract, reimbursement of the placement fee in the amount of ₱90,000.00, as well as payment of damages and attorney's fee for the litigation of her cause.

---

[8] *Id*. at 36.

[9] *Id*. at 37.

[10] *Id*. at 1-2.

To prove that she incurred debts for the placement fee, Iladan presented a) a mortgage deed[11] and a deed[12] of transfer of rights over her family's properties in favor of other persons, b) a sworn statement[13] of her mother, Rebecca U. Ondoy (Ondoy), stating that Iladan paid ₱30,000.00 in cash to respondents for the placement fee, and borrowed ₱60,000.00 from Nippon Credit Corp., Inc. (Nippon), a lending company referred by respondents, and c) a demand letter[14] from Nippon demanding payment of her loan.

Respondents, on the hand, averred that Iladan was not illegally dismissed but voluntarily resigned as shown by: (1) her handwritten resignation letter and (2) the Affidavit of Release, Waiver and Quitclaim and the Agreement, both voluntarily executed by her before Philippine Consulate officials in Hongkong. Respondents also denied collecting a placement fee considering the prohibition in the POEA rules against the charging of placement fee for domestic helpers deployed to Hongkong.

***Ruling of the Labor Arbiter***

In a Decision[15] dated August 11, 2010, the Labor Arbiter declared Iladan to have been illegally dismissed and that she was only forced by respondents to resign. The Labor Arbiter was not persuaded by respondents' allegation that Iladan resigned since she was barely eight days into her job without specifying any credible reason considering what she had gone through to get employment abroad. The Labor Arbiter did not consider the Affidavit of Release, Waiver and Quitclaim and the Agreement as proofs that Iladan voluntarily resigned because she was not assisted by any lawyer or Consulate official who could have explained the import of these documents. Moreover, quitclaims are looked upon with disfavor and do not estop

---

[11] *Id*. at 22.

[12] *Id*. at 23.

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

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

[15] *Id*. at 66-75; penned by Labor Arbiter Quintin B. Cueto III.

employees from pursuing their just claims. The Labor Arbiter also struck down respondents' allegation that they did not charge any placement fee considering that they are engaged in recruitment and placement for profit. Besides, Iladan submitted evidence to prove payment thereof.

Thus, the Labor Arbiter awarded Iladan her salaries corresponding to the unexpired portion of her contract, net of the ₱35,000.00 she had already received. Respondents were also ordered to refund the placement fee, and to pay moral and exemplary damages as well as attorney's fees. Thus:

> WHEREFORE, premises considered, complainant's complaint is meritorious as she was illegally terminated by respondents.
>
> Respondents La Suerte International Manpower Agency, Domestic Services International and Debbie S. Lao, are jointly and solidarily liable to pay complainant Lorelei O. Iladan the following monetary awards, to wit:
>
> 1. Refund of complainant's placement fee of ₱90,000.00 plus 12% per annum;
>
> 2. Payment of complainant's 24 monthly salary based on the contract at HK$3,580.00 per month or its Philippine Peso equivalent less the ₱35,000.00 given as financial assistance;
>
> 3. Moral damages of ₱100,000.00;
>
> 4. Exemplary damages of ₱30,000.00;
>
> 5. Attorney's fee of 10% of the total monetary award.
>
> SO ORDERED.[16]

***Ruling of the National Labor Relations Commission***

On appeal with the NLRC, respondents averred that the Labor Arbiter erred in holding that the resignation was not voluntary. They claimed that Iladan's unsubstantiated allegations of harassment and coercion cannot prevail over a waiver and a settlement which were verified by the Philippine Consulate officials in the regular performance of their duties. They also

---

[16] *Id*. at 75.

insisted that there was no credible proof that placement fee was paid.

In a Resolution[17] dated February 23, 2011, the NLRC dismissed the appeal and affirmed the Labor Arbiter's judgment. The NLRC observed that respondents' dismissal was without just cause and due process since no specific reason was given for Iladan's alleged voluntary resignation. The NLRC found credible Iladan's claim that the amount she received from respondents as financial assistance was not a settlement but an enticement for her to leave her workplace. Further, the NLRC ruled that while the Affidavit of Release, Waiver and Quitclaim and the Agreement were executed before Consular officials, it cannot be presumed that the consular officials regularly performed their duties because respondents failed to adduce proof that the contents of these documents were fully explained in the language known to Iladan. The NLRC noted that respondents' general denial that placement fee was paid cannot prevail over the positive allegations of witness supported by evidence.

Respondents filed a motion for reconsideration which was denied in the NLRC Resolution[18] of March 31, 2011.

***Ruling of the Court of Appeals***

Respondents sought recourse to the CA *via* a Petition for *Certiorari*. In a Decision[19] dated May 16, 2012, the CA granted the Petition for *Certiorari*, reversed the findings of both the Labor Arbiter and NLRC and dismissed Iladan's complaint for illegal dismissal. According to the CA, Iladan was not dismissed but voluntarily resigned as substantially proven by her resignation letter, the Affidavit of Release, Waiver and Quitclaim and the Agreement which were both executed before the Philippine Consulate General as well as her acceptance of ₱35,000.00 as full settlement of her claims. Iladan's execution and signing of a settlement and affidavit duly assisted by the Labor Attache

---

[17] *Id*. at 288-306.

[18] *Id*. at 340-341.

[19] CA *rollo,* pp. 388-402.

and a Conciliator-Mediator convinced the CA that Iladan voluntarily severed her employment relation with respondents. Moreover, the CA held that Iladan failed to prove that she paid any placement fee. Hence, the CA attributed grave abuse of discretion on the part of the NLRC in ruling that Iladan was coerced into resigning and in holding that placement fee was paid despite absence of any factual basis.

Iladan filed a motion for reconsideration which was denied in the CA Resolution[20] of October 4, 2012.

**Issues**

Hence, this Petition raising the following issues: (1) whether the CA may reverse the factual findings of both the Labor Arbiter and the NLRC; (2) whether Iladan's resignation and her execution of the Affidavit of Release, Waiver and Quitclaim and the Agreement were all voluntarily made; (3) whether Iladan's acceptance of the financial assistance constitutes final settlement of her claims against respondents; (4) whether Iladan was illegally dismissed; and (5) whether Iladan paid any placement fee.

**Our Ruling**

The Petition is without merit. The CA did not err in finding that the NLRC committed grave abuse of discretion in its decision.

Iladan contends that the CA failed to prove any grave abuse of discretion on the part of the NLRC and thus had no basis in reversing the NLRC resolutions which affirmed the Labor Arbiter's Decision. She argues that a writ of *certiorari* may not be used to correct the Labor Arbiter's and NLRC's evaluation of evidence and factual findings. She avers that the factual findings of the Labor Arbiter and the NLRC are entitled to great weight and should be accorded respect and finality.

Iladan's arguments are untenable. In a special civil action for *certiorari,* the CA has ample authority to receive and review the evidence and make its own factual determination.[21] Thus,

---

[20] *Id*. at 433-435.

[21] *Maralit v. Philippine National Bank,* 613 Phil. 270, 288-289 (2009).

the CA is not precluded from reviewing factual findings and conclusions of the NLRC when it finds that the NLRC committed grave abuse of discretion in disregarding evidence material to the controversy.[22] In the present case, we find that the Labor Arbiter and the NLRC acted with grave abuse of discretion because their factual findings were arrived at in disregard of the evidence.

***Iladan's resignation was voluntary; there was no illegal dismissal.***

In illegal dismissal cases, the employer has the burden of proving that the employee's dismissal was legal. However, to discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment.[23]

Iladan maintains that she was threatened and coerced by respondents to write the resignation letter, to accept the financial assistance and to sign the waiver and settlement. Consequently, she insists that her act of resigning was involuntary.

The Court is not convinced as we find no proof of Iladan's allegations. It is a settled jurisprudence that it is incumbent upon an employee to prove that his resignation is not voluntary.[24] However, Iladan did not adduce any competent evidence to prove that respondents used force and threat.

For intimidation to vitiate consent, the following requisites must be present: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability

---

[22] *Pepsi-Cola Products Philippines, Inc. v. Molon,* G.R. No. 175002, February 18, 2013, 691 SCRA 113, 125.

[23] *Brown Madonna Press, Inc. v. Casas*, G.R. No. 200898, June 15, 2015.

[24] *Hechanova Bugay Vilchez Lawyers v. Matorre,* G.R. No. 198261, October 16, 2013, 707 SCRA 570, 582.

to inflict the threatened injury to his person or property. In the instant case, not one of these essential elements was amply proven by [Iladan]. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation.[25]

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether in fact, he or she intended to sever from his or her employment.[26]

In the instant case, Iladan executed a resignation letter in her own handwriting. She also accepted the amount of ₱35,000.00 as financial assistance and executed an Affidavit of Release, Waiver and Quitclaim and an Agreement, as settlement and waiver of any cause of action against respondents. The affidavit of waiver and the settlement were acknowledged/ subscribed before Labor Attache Romulo on August 6, 2009, and duly authenticated by the Philippine Consulate. An affidavit of waiver duly acknowledged before a notary public is a public document which cannot be impugned by mere self-serving allegations.[27] Proof of an irregularity in its execution is absolutely essential. The Agreement likewise bears the signature of Conciliator-Mediator Diaz. Thus, the signatures of these officials sufficiently prove that Iladan was duly assisted when she signed the waiver and settlement. Concededly, the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[28] In this case, no such evidence was presented. Besides, "[t]he Court has ruled that a waiver or quitclaim is a valid and binding agreement

---

[25] *BMG Records (Phils.), Inc. v. Aparecio,* 559 Phil. 80, 93 (2007).

[26] *Id*. at 94.

[27] *Heirs of Brusas v. Court of Appeals,* 372 Phil. 47, 58 (1999).

[28] *Sevilla v. Cardenas,* 529 Phil. 419, 433 (2006).

between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import."[29] Absent any extant and clear proof of the alleged coercion and threats Iladan allegedly received from respondents that led her to terminate her employment relations with respondents, it can be concluded that Iladan resigned voluntarily.

***No placement fee was paid.***

Anent Iladan's claim of payment of placement fee, the Court finds no sufficient evidence that payment had been made. Iladan and her mother's affidavit attesting to its payment are self-serving evidence and deserve no weight at all. Neither did the mortgage loan and deed of transfer executed in favor of third persons as well as the letter from Nippon prove that placement fee was paid to respondents. These documents merely show that Iladan is indebted to certain persons and to Nippon; however, they do not prove that these indebtedness were incurred in connection with the placement fee she purportedly paid to respondents. As aptly ruled by the CA, Iladan has the burden of proving, with clear and convincing evidence, the fact of payment.

All told, the Labor Arbiter and the NLRC erred in finding that petitioner was illegally dismissed as no substantial evidence was adduced to sustain this finding. As shown above, Iladan failed to substantiate her claim of illegal dismissal for there was no proof that her resignation was tainted with coercion and threats, as she strongly claims.

"Although the Supreme Court has, more often than not, been inclined towards the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine."[30]

---

[29] *Plastimer Industrial Corp. v. Gopo,* 658 Phil. 627, 635 (2011).

[30] *Alfaro v. Court of Appeals,* 416 Phil. 310, 321 (2001).

**WHEREFORE,** the Petition is **DENIED.** The May 16, 2012 Decision and October 4, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 119903 are **AFFIRMED.**

**SO ORDERED.**

*Carpio (Chairperson), Brion, Mendoza,* and *Leonen, JJ.*, concur.

---

**SECOND DIVISION**

[G.R. No. 206584. January 11, 2016]

**MAE FLOR GALIDO,** *petitioner, vs.* **NELSON P. MAGRARE, EVANGELINE M. PALCAT, RODOLFO BAYOMBONG, and REGISTER OF DEEDS OF ANTIQUE, San Jose, Antique,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; CIVIL CODE; CONTRACTS; NO VALID MORTGAGE IN FAVOR OF PETITIONER.—** Petitioner derives her title from Andigan, as mortgagor. However, at the time Andigan mortgaged the lots to petitioner he had already sold the same to Magrare, Palcat and Bayombong. Indeed, petitioner's case is negated by Civil Case No. 2001-2-3230. There, Andigan admitted that Lot Nos. 1052-A-1, 1052-A-2 and 1052-A-3 were the parcels of land he sold to Magrare, Palcat and Bayombong, respectively, on 28 December 1998. Hence, when Andigan mortgaged the lots to petitioner on 8 May 2000, he no longer had any right to do so. We quote with approval the discussion of the trial court: Finally, when the spouses Andigan mortgaged to the herein petitioner Galido Lot Nos. 1052-A-1 and 1052-A-2, the said lots were already sold to the respondents Palcat and Magrare. It is therefore as if nothing was mortgaged to her because Isagani Andigan was no longer

the owner of the mortgaged real property. Under Art. 2085 of the Civil Code, two of the prescribed requisites for a valid mortgage are, that, the mortgagor be the absolute owner of the thing mortgaged and, that, he has the free disposal thereof. These requisites are absent when Isagani Andigan and his wife mortgaged the lots alluded to above to the herein petitioner. A spring cannot rise higher than its source. Since Andigan no longer had any interest in the subject properties at the time he mortgaged them to her, petitioner had nothing to foreclose.

**2. ID.; ID.; ID.; PRIOR REGISTERED ADVERSE CLAIMS PREVAIL.—** The parcels of land involved in this case are registered under the Torrens system. One who deals with property registered under the Torrens system need not go beyond the certificate of title, but only has to rely on the certificate of title. 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 on said certificate and any of the encumbrances provided by law. The adverse claims were registered on the respective titles on 6 February 2001, at 11:00 in the morning. They were already in existence when petitioner filed her case for foreclosure of mortgage. In fact, when petitioner registered the mortgages on 6 February 2011 at 3:00 in the afternoon, she was charged with the knowledge that the properties subject of the mortgage were encumbered by interests the same as or better than that of the registered owner. Petitioner does not hide the fact that she was aware of the adverse claim and the proceedings in Civil Case No. 2001-2-3230. In her petition before the Court, she stated that "on March 03, 2004, petitioner had filed a third party claim with the Regional Trial Court, Branch 11 in said Civil Case No. 2001-2-3230." Instead, petitioner insists that it was illegal for Magrare, Palcat and Bayombong to file a case compelling the surrender of the owner's duplicates of TCT Nos. T-22374, T-22375 and T-22376. On the contrary, the law itself provides the recourse they took – registering an adverse claim and filing a petition in court to compel surrender of the owner's duplicate certificate of title. x x x Further, RTC Branch 11, after trial on the merits of Civil Case No. 2001-2-3230, found for Magrare, Palcat and Bayombong. That decision has attained finality and was entered in the Book of Judgments. The trial

court was correct in not touching upon the final and executory decision in that case.

**3. ID.; ID.; ID.; PETITIONER IS NOT A BUYER IN GOOD FAITH.—** But even assuming that the mortgage was valid, petitioner can hardly be considered a buyer in good faith. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. As discussed above, petitioner had notice as early as 2001 of the adverse claims of Magrare, Palcat and Bayombong. The decision in Civil Case No. 2001-2-3230 became final and executory before the Certificate of Sale was issued by the Provincial Sheriff on 14 July 2004 in Civil Case No. 3345. Without speculating as to petitioner's motivations in foreclosing on the mortgage, the law on the matter is clear. Preference is given to the prior registered adverse claim because registration is the operative act that binds or affects the land insofar as third persons are concerned. Thus, upon registration of respondents' adverse claims, notice was given the whole world, including petitioner. Hence, the trial court's dismissal of the case against Magrare and Palcat is in order. There is no need for us to discuss petitioner's other assignments of error. Besides, the same issues were sufficiently addressed by the Court of Appeals.

**4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; THE HEIRS OF BAYOMBONG ARE INDISPENSABLE PARTIES.—** However, we find reversible error on the part of the trial court in not impleading the heirs of Bayombong. Indispensable parties are parties in interest without whom no final determination can be had of an action. Petitioner's action was for the cancellation of titles, including TCT No. T-22376. In its Order dated 17 January 2005, the trial court itself recognized that the controversy was contentious in nature, and required the participation of Bayombong, among others. Bayombong, like respondents Magrare and Palcat stood to be benefited or prejudiced by the outcome of the case. Since he was already dead at the time the case was filed by petitioner, the heirs of Bayombong stand in his stead not only as parties

in interest, but indispensable parties. Without the heirs of Bayombong to represent the interest of Bayombong, there can be no complete determination of all the issues presented by petitioner, particularly, in regard to TCT No. T-22376.

**5. ID.; ID.; ID.; PARTIES MAY BE ADDED BY ORDER OF THE COURT, ON MOTION OF A PARTY OR ON ITS OWN INITIATIVE AT ANY STAGE OF THE ACTION.—** Failure to implead an indispensable party is not a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action. By denying petitioner's motion to implead the heirs of Bayombong due to technicalities, the trial court in effect deprived petitioner a full adjudication of the action, and the heirs of Bayombong any beneficial effects of the decision. Indeed, the dismissal of the petition as to Magrare and Palcat greatly benefits them as the controversy regarding TCT Nos. T-22374 and T- 22375 is finally laid to rest. Not so with the heirs of Bayombong. We note that the trial court's decision discusses TCT Nos. T-22374 and T-22375. The records do not contain any direct refutation of the claim of petitioner as to TCT No. T-22376, as could be expected since there were no parties impleaded to defend such interest. Hence, we cannot, without depriving petitioner due process, extend the trial court's decision to TCT No. T-22376. Given the Court's authority to order the inclusion of an indispensable party at any stage of the proceedings, the heirs of Bayombong are hereby ordered impleaded as parties-defendants. Since the action has been disposed of as regards Magrare and Palcat, the action is to proceed solely against the heirs of Bayombong, once they are properly impleaded.

**APPEARANCES OF COUNSEL**

*Mariano R. Pefianco* for petitioner.
*Alexis C. Salvani* for respondents.

## D E C I S I O N

**CARPIO, *J.*:**

### The Case

Before the Court is a petition for review[1] assailing the Decision[2] dated 29 February 2012 and Resolution[3] dated 28 February 2013 of the Court of Appeals in CA-G.R. CEB CV No. 02306, affirming the Order[4] dated 2 October 2007 of the Regional Trial Court (RTC), Branch 12, San Jose, Antique in RTC Cad. Case No. 2004-819, Cad. Record No. 936.

### The Antecedent Facts

On 19 August 2004, Mae Flor Galido (petitioner) filed before the RTC of San Jose, Antique a petition[5] to cancel all entries appearing on Transfer Certificate of Title (TCT) Nos. T-22374, T-22375 and T-22376, all in the name of Isagani Andigan (Andigan), and to annul TCT No. T-24815 and all other TCTs issued pursuant to the Order dated 18 October 2011 of RTC Branch 11, San Jose, Antique (Branch 11) in RTC Civil Case No. 2001-2-3230. The petition was raffled to RTC Branch 12, San Jose, Antique (trial court) and docketed as RTC Cad. Case No. 2004-819 Cad. Record No. 936.

The controversy revolves around three parcels of land, designated as Lot 1052-A-1, Lot 1052-A-2 and Lot 1052-A-3, all of the San Jose, Antique Cadastre. These parcels of land were, prior to subdivision in 1999, part of Lot 1052-A which was covered by TCT No. T-21405 in the name of Andigan.

---

[1] Under Rule 45 of the Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 24-39. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles.

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

[4] *Id*. at 157-167.

[5] *Id*. at 52-56.

On 28 December 1998, Andigan sold undivided portions of Lot 1052- A to Nelson P. Magrare (Magrare), Evangeline M. Palcat (Palcat) and Rodolfo Bayombong (Bayombong). To Magrare was sold an undivided portion with an area of 700 square meters, more or less; to Palcat, 1,000 square meters, more or less; and to Bayombong, 500 square meters, more or less.

Andigan caused the subdivision of Lot 1052-A into five lots, namely: Lot 1052-A-1, Lot 1052-A-2, Lot 1052-A-3, Lot 1052-A-4 and Lot 1052-A-5. On 18 October 1999, TCT No. T-21405 was cancelled and new certificates were issued for the subdivided portions. Pertinent to the case are TCT No. T-22374 which was issued for Lot 1052-A-1, TCT No. T-22375 for Lot 1052-A-2 and TCT No. T-22376 for Lot 1052-A-3, all in the name of Andigan. Andigan did not turn over the new TCTs to Magrare, Palcat and Bayombong, and the latter were unaware of the subdivision.

On 8 May 2000, Andigan mortgaged the same three lots to petitioner and the latter came into possession of the owner's duplicate copies of TCT Nos. T-22374, T-22375 and T-22376.

On 6 February 2001, at 11:00 a.m., Magrare, Palcat and Bayombong registered their respective adverse claims on TCT Nos. T-22374, T-22375 and T-22376. On the same day, at 3:00 p.m., petitioner also registered her mortgage on the same TCTs, such that the certificates in the custody of the Register of Deeds were annotated thus:

TCT No. T-22374

Entry No. 246290 – Adverse Claim – executed by Nelson Magrare, covering the parcel of land described herein subject to the conditions embodied in the instrument on file in this office. Date of Instrument: February 6, 2001.
Date of Inscription: February 6, 2001.
A:M 11:00

Entry No. 246303 – Real Estate Mortgage – executed by Isagani Andigan in favor of Mae Flor Galido, covering the parcel of land described herein for the sum of SIXTY THOUSAND PESOS

(₱60,000.00), subject to the conditions embodied in the instrument acknowledged before Notary Public Mariano R. Pefianco of San Jose, Antique as Doc. No. 302 Page No. 61; Book No. 61, Series of 2000.
Date of Instrument: May 8, 2000.
Date of Inscription: February 6, 2001.
P:M 3:00[6]

TCT No. T-22375

Entry No. 246300 – Adverse Claim – executed by Evangeline M. Palcat, covering the parcel of land described herein subject to the conditions embodied in the instrument on file in this office.
Date of Instrument: February 6, 2001.
Date of Inscription: February 6, 2001.
A:M 11:00

Entry No. 246305 – Real Estate Mortgage – executed by Isagani Andigan in favor of Mae Flor Galido, covering the parcel of land described herein for the sum of TEN THOUSAND PESOS (₱10,000.00), subject to the conditions embodied in the instrument acknowledged before Notary Public Mariano R. Pefianco of San Jose, Antique as Doc. No. 226; Page No. 46; Book No. IV, Series of 2000.
Date of Instrument: May 8, 2000.
Date of Inscription: February 6, 2001.
P:M 3:00[7]

TCT No. T-22376

Entry No. 246299 – Adverse Claim – executed by Rodolfo Bayombong, covering the parcel of land described herein subject to the conditions embodied in the instrument on file in this office.
Date of Instrument: February 6, 2001.
Date of Inscription: February 6, 2001.
A:M 11:00

Entry No. 246304 – Real Estate Mortgage – executed by Isagani Andigan in favor of Mae Flor Galido, covering the parcel of land described herein for the sum of SIXTY THOUSAND PESOS (₱60,000.00), subject to the conditions embodied in the instrument acknowledged before Notary Public Mariano R. Pefianco of San Jose, Antique as Doc. No. 219; Page No. 44; Book No. IV, Series of 2000.

---

[6] Records, p. 38.

[7] *Id*. at 40.

Date of Instrument: May 5, 2000.
Date of Inscription: February 6, 2001.
P:M 3:00[8]

On 22 February 2001, Magrare, Palcat and Bayombong filed before the RTC of San Jose, Antique a Petition to Compel the Surrender to the Register of Deeds of Antique the Owner's Duplicate Copies of TCT No. T-22374 Issued for Lot 1052-A-1; TCT No. T-22375 Issued for Lot 1052-A-2; and TCT No. T-22376 Issued for Lot 1052-A-3, all of the San Jose Cadastre against the Spouses Isagani and Merle Andigan.[9] The case, raffled to Branch 11 and docketed as Civil Case No. 2001-2-3230, was tried and decided on its merits.

Civil Case No. 2001-2-3230 (RTC Branch 11)

According to Magrare, Palcat and Bayombong, even prior to the subdivision, they had made oral demands on Andigan to secure TCT No. T-21405 in order that they may take the appropriate steps to register the affected lots in their names.[10] That Andigan had proceeded with the subdivision and registration of the subdivided lots was unknown to them. They registered their adverse claims upon discovery of the subdivision. Neither were they aware that Andigan had mortgaged the lots he sold to them. They only discovered the mortgage when they requested certified true copies of TCT Nos. T-22374, T-22375 and T-22376, in preparation for filing a petition to compel delivery.

On the other hand, Andigan insisted that he made demands on Magrare, Palcat and Bayombong to pay for the costs of subdividing Lot 1052-A and registering the subdivided lots. Their failure to pay the costs was his motivation in withholding the TCTs from them. In other words, Andigan did not dispute that the undivided portions of Lot 1052-A he sold them were indeed Lot 1052-A-1 covered by TCT No. T-22374, Lot 1052-

---

[8] *Id*. at 42.

[9] *Rollo*, pp. 116-120.

[10] *Id.*

A-2 covered by TCT No. T-22375 and Lot 1052-A-3 covered by TCT No. T-22376.[11]

On 18 October 2001, RTC Branch 11 issued an Order granting the petition, to wit:

> WHEREFORE, premises considered, the PETITION dated February 16, 2001 is hereby granted and, in consequence, the respondent spouses ISAGANI ANDIGAN and MERL[E] ANDIGAN are hereby directed to surrender or deliver to the Register of Deeds for Antique the owner's duplicate copies of Transfer Certificates of Title Nos. T-22374, T-22375 and T-22376.
>
> If for any reason the outstanding owner's duplicate copies of the subject certificates of title cannot be so surrendered or delivered, the Register of Deeds for Antique is hereby ordered to annul the same, issue new certificates of title in lieu thereof which shall contain a memorandum of the annulment of the outstanding owner's duplicate copies.
>
> SO ORDERED.[12]

Spouses Andigan through counsel filed a Notice of Appeal. The appeal was docketed as CA G.R. CV 73363. However, they failed to timely file their appellants' brief, and the appeal was dismissed in a Resolution dated 15 October 2002.[13] The 15 October 2002 Resolution became final and executory on 22 December 2002 and was recorded in the Book of Entries of Judgments.[14]

Upon Motion for Execution, RTC Branch 11 issued the Writ of Execution directing the Provincial Sheriff of Antique to cause the satisfaction of the Order dated 18 October 2001.[15] For failure to gain satisfaction of the order from the Spouses Andigan, the Register of Deeds was notified and commanded

---

[11] *Id.* at 131-133.

[12] Records, p. 188.

[13] *Id.* at 189-190.

[14] *Rollo*, p. 81.

[15] Records, pp. 193-194.

to annul the duplicate copies of TCT Nos. T-22374, T-22375 and T-22376 and new ones were issued in lieu thereof.[16]

The records bare that petitioner filed a Third Party Claimant's Affidavit dated 3 March 2004[17] before the RTC Branch 11 after learning of the Notification and Writ of Execution.

The following were also inscribed on TCT Nos. T-22374, T-22375, and T-22376:

(1) Notice of Lis Pendens of CA G.R. CV-No. 73363, on 16 July 2002;
(2) Order issued by RTC Branch 11 directing the Register of Deeds for Antique to annul the subject certificates and issue new ones in lieu thereof, on 21 April 2004;
(3) Resolution by the Court of Appeals dismissing the appeal from the RTC Branch 11 decision in Civil Case No. 2001-2-3230, on 21 April 2004;
(4) Writ of Execution issued by RTC Branch 11, on 21 April 2004; and
(5) Notification issued by the Sheriff to cancel the owner's duplicate copies, on 21 April 2004.[18]

Civil Case No. 3345 (RTC Branch 10)

Meanwhile, petitioner also filed with the RTC a case for foreclosure of mortgage against the heirs of Isagani Andigan, entitled *Mae Flor Galido v. Heirs of Isagani Andigan*.[19] The case was raffled to Branch 10 and docketed as Civil Case No. 3345.

It appears that petitioner prevailed in Civil Case No. 3345. As a result, the Sheriff issued a Certificate of Sale[20] in favor of petitioner of the properties covered by TCT Nos. T-22374, T-22375 and T-22376.

---

[16] *Id*. at 197-200.

[17] *Id*. at 44-45.

[18] *Id*. at 38, 40 and 42.

[19] *Rollo*, p. 12.

[20] *Id*. at 57-58.

RTC Cad. Case No. 2004-819, Cad. Record No. 936 (RTC Branch 12)

Hence, petitioner filed a petition seeking to cancel all entries appearing on TCT No. T-22374 for Lot 1052-A-1, TCT No. T-22375 for Lot 1052-A-2, and TCT No. T-22376 for Lot 1052-A-3, and to annul TCT No. T-24815[21] and all other titles issued pursuant to RTC Civil Case No. 2001-2-3230.

Petitioner alleged that she had been a holder in good faith of the following owner's duplicate certificates of title, all of the San Jose Cadastre, in the name of one Andigan:

TCT No. T-22374 for Lot 1052-A-1;
TCT No. T-22375 for Lot 1052-A-2; and
TCT No. T-22376 for Lot 1052-A-3.

And that she had prevailed in Civil Case No. 3345 (RTC Branch 10) and was issued a Certificate of Sale by the Sheriff. She also averred that the titles contained adverse claims filed by Magrare, Palcat and Bayombong, and annotations in connection with Civil Case No. 2001-2-3230.

Finding that the case was contentious in nature, the trial court ordered petitioner to amend her petition to implead the following: (1) Magrare, in whose name TCT No. T-24815 was registered and who had earlier registered an adverse claim on TCT No. T-22374; (2) Palcat, who had registered an adverse claim on TCT No. T-22375; and (3) Bayombong, who had registered an adverse claim on TCT No. T-22376.[22]

After petitioner amended her petition, the trial court issued summons to Magrare, Palcat and Bayombong.[23] The summons were duly served on Magrare and Palcat. However, the sheriff reported that Bayombong was not served because he was already dead.[24] Petitioner moved to substitute the heirs of Bayombong, but the trial court ruled that the substitution was without legal

---

[21] Issued in lieu of TCT No. T-22374 in the name of Magrare.

[22] Order dated 17 January 2005. Records, p. 55.

[23] *Id*. at 74.

[24] *Id*. at 75.

basis because Bayombong was not properly impleaded. He died on 13 December 2001 and could not have been made a party to the petition filed on 19 August 2004. Hence, the trial court dismissed the case against Bayombong in an Order dated 22 April 2005.[25]

Petitioner moved to amend her petition for the second time to include the heirs of Bayombong and the Rural Bank of Sibalom (Antique), Inc., whose mortgage was registered on TCT No. T-24815. The trial court ruled that the names and addresses of all the heirs of Bayombong were not identified, and that there was no showing that the widow of Bayombong represented all the heirs.[26] The trial court also found no legal or factual basis to implead the bank. Hence, the trial court denied petitioner's motion to further amend the petition.[27]

Meanwhile, respondents Magrare and Palcat filed their answer on 4 March 2005,[28] setting forth the following affirmative defenses: (1) petitioner has no cause of action against them; and (2) the present case is barred by the prior ruling in Civil Case No. 2001-2-3230.

Upon motion, the trial court held a summary hearing on the affirmative defenses. Despite due notice, neither petitioner nor her counsel appeared. The trial court allowed respondents' counsel to proceed with the presentation of evidence.[29]

After receiving respondents' evidence in support of their affirmative defenses, the trial court set another hearing to give petitioner a chance to refute the same.[30] However, despite due notice and even a postponement requested by petitioner,[31] she

---

[25] *Id*. at 107-108.

[26] *Id*. at 124-125.

[27] *Id*.

[28] *Id*. at 79-83.

[29] *Id*. at 270-271.

[30] *Id*.

[31] *Id*. at 307-309.

and her counsel failed to appear.[32] The judge took petitioner's absences during the settings for the preliminary hearing as a waiver to present documentary evidence or arguments to refute respondents' evidence.

**The Ruling of the Trial Court**

On 2 October 2007, the trial court ruled in favor of respondents, dismissing the case, thus:

> On the basis of the foregoing findings and observations, this court finds meritorious the affirmative defenses put up by the respondents/ adverse claimants, that, the petitioner Mae Flor Galido has no cause of action against them and, that, this case is already barred by prior judgment rendered in Civil Case No. 2001-2-3230. In Nicasio I. Alacantara, et al. *vs*. Vicente C. Ponce, et al., G.R. No. 131547, Dec. 15, 2005, it was ruled that, "Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Court[s] must therefore guard against any scheme calculated to bring about the result. Constituted as they are to put an end to the controversies, courts should frown upon any attempt to prolong them."
>
> PREMISES CONSIDERED, the petition in this case is hereby DENIED and, this case dismissed for the reasons aforestated.[33]

The trial court found petitioner's prayer for cancellation of entries concerning the adverse claims of respondents moot and academic because the same were already cancelled.[34] Further, the decision in Civil Case No. 2001-2-3230 had already become final and in fact was executed.[35] The trial court also ruled that since Andigan had already sold Lots 1052-A-1 and 1052-A-2

---

[32] *Id*. at 312-313.

[33] CA *rollo*, pp. 50-51.

[34] *Id.* at 48.

[35] *Id.* at 49.

to respondents when he mortgaged the same to her, it was as if nothing was mortgaged at all.[36]

Petitioner filed an appeal before the Court of Appeals with the following assignment of errors:

1. THE LOWER COURT ERRED IN FAILING TO GIVE NOTICES TO ALL PARTIES IN INTEREST;
2. THE LOWER COURT ERRED IN REQUIRING THE APPELLANT TO AMEND HER PETITION TO IMPLEAD THE ADVERSE CLAIMANTS-APPELLEES;
3. THE LOWER COURT ERRED IN REFUSING TO ADMIT AMENDED PETITION THAT COMPLIED WITH HIS LIKINGS;
4. THE LOWER COURT ERRED IN REFUSING TO CONDUCT PRE-TRIAL CONFERENCE IN THE INSTANT CASE;
5. THE TRIAL COURT ERRED IN ALLOWING THE HEARING OF ADVERSE CLAIMANTS-APPELLEES' AFFIRMATIVE DEFENSES;
6. THE TRIAL COURT ERRED IN REFUSING TO CONSIDER THE EVIDENCE OF THE APPELLANT IN ITS DECISION; [AND]
7. THE LOWER COURT ERRED IN DISMISSING THE PETITION FILED IN THE INSTANT CASE.[37]

**The Ruling of the Court of Appeals**

The Court of Appeals denied petitioner's appeal in a Decision[38] dated 29 February 2012, the dispositive portion of which reads:

WHEREFORE, premises considered, and finding no reversible error in the order appealed from, the appeal is DENIED and the Order dated October 2, 2007 of the Regional Trial Court, Branch 12 in San Jose, Antique denying and dismissing the petition, is AFFIRMED.[39]

---

[36] *Id*. at 50.

[37] *Id*. at 26.

[38] *Rollo*, pp. 24-39.

[39] *Id*. at 38-39.

For lack of merit, the Court of Appeals denied petitioner's motion for reconsideration in a Resolution[40] dated 28 February 2013.

Hence, the instant petition.

**The Issues**

Petitioner raises the following issues:

1. WHETHER OR NOT NOTICES TO ALL PARTIES IN INTEREST ARE REQUIRED IN THIS CASE;
2. WHETHER OR NOT THE LOWER COURT COULD ORDER PETITIONER TO AMEND HER PETITION TO IMPLEAD THE ADVERSE CLAIMANTS-APPELLEES;
3. WHETHER OR NOT THE LOWER COURT COULD REFUSE ADMISSION OF AMENDED PETITION THAT INCLUDED HEIRS OF THE DECEASED RODOLFO BAYOMBONG;
4. WHETHER OR NOT THE LOWER COURT COULD REFUSE HOLDING PRE-TRIAL CONFERENCE IN THE INSTANT CASE;
5. WHETHER OR NOT THE TRIAL COURT WAS CORRECT IN ALLOWING THE HEARING OF ADVERSE CLAIMANTS- APPELLEES' AFFIRMATIVE DEFENSES;
6. WHETHER OR NOT THE TRIAL COURT WAS CORRECT IN REFUSING TO CONSIDER THE EVIDENCE OF THE PETITIONER IN ITS DECISION; [AND]
7. WHETHER OR NOT THE LOWER COURT WAS CORRECT IN DISMISSING THE PETITION FILED IN THE INSTANT CASE.[41]

**The Court's Ruling**

We grant the petition in part.

At the crux is the question of who has a better right to the properties concerned: petitioner on the one hand, and Magrare, Palcat and Bayombong on the other?

---

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

[41] *Id*. at 11.

*No Valid Mortgage in Favor of Petitioner*

Petitioner derives her title from Andigan, as mortgagor. However, at the time Andigan mortgaged the lots to petitioner he had already sold the same to Magrare, Palcat and Bayombong. Indeed, petitioner's case is negated by Civil Case No. 2001-2-3230. There, Andigan admitted that Lot Nos. 1052-A-1, 1052-A-2 and 1052-A-3 were the parcels of land he sold to Magrare, Palcat and Bayombong, respectively, on 28 December 1998.[42] Hence, when Andigan mortgaged the lots to petitioner on 8 May 2000, he no longer had any right to do so. We quote with approval the discussion of the trial court:

> Finally, when the spouses Andigan mortgaged to the herein petitioner Galido Lot Nos. 1052-A-1 and 1052-A-2, the said lots were already sold to the respondents Palcat and Magrare. It is therefore as if nothing was mortgaged to her because Isagani Andigan was no longer the owner of the mortgaged real property. Under Art. 2085 of the Civil Code, two of the prescribed requisites for a valid mortgage are, that, the mortgagor be the absolute owner of the thing mortgaged and, that, he has the free disposal thereof. These requisites are absent when Isagani Andigan and his wife mortgaged the lots alluded to above to the herein petitioner.[43]

A spring cannot rise higher than its source. Since Andigan no longer had any interest in the subject properties at the time he mortgaged them to her, petitioner had nothing to foreclose.

*Prior Registered Adverse Claims Prevail*

The parcels of land involved in this case are registered under the Torrens system. One who deals with property registered under the Torrens system need not go beyond the certificate of title, but only has to rely on the certificate of title.[44] Every subsequent purchaser of registered land taking a certificate of title for value and in good faith shall hold the same free from

---

[42] Records, pp. 186-188.

[43] *Id.* at 325.

[44] *Casimiro Development Corporation v. Mateo*, 670 Phil. 311, 326-327 (2011).

all encumbrances except those noted on said certificate and any of the encumbrances provided by law.[45]

The Property Registration Decree[46] provides:

Section 51. *Conveyance and other dealings by registered owner.* An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Section 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

The adverse claims were registered on the respective titles on 6 February 2001, at 11:00 in the morning. They were already in existence when petitioner filed her case for foreclosure of mortgage. In fact, when petitioner registered the mortgages on 6 February 2011 at 3:00 in the afternoon, she was charged with the knowledge that the properties subject of the mortgage were encumbered by interests the same as or better than that of the registered owner.

---

[45] Sec. 44, Presidential Decree No. 1529, entitled *Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes*, also known as the *Property Registration Decree*.

[46] Presidential Decree No. 1529.

Petitioner does not hide the fact that she was aware of the adverse claim and the proceedings in Civil Case No. 2001-2-3230. In her petition before the Court, she stated that "on March 03, 2004, petitioner had filed a third party claim with the Regional Trial Court, Branch 11 in said Civil Case No. 2001-2-3230."[47]

Instead, petitioner insists that it was illegal for Magrare, Palcat and Bayombong to file a case compelling the surrender of the owner's duplicates of TCT Nos. T-22374, T-22375 and T-22376. On the contrary, the law itself provides the recourse they took – registering an adverse claim and filing a petition in court to compel surrender of the owner's duplicate certificate of title:

> Sec. 70. *Adverse claim*. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land which the right or interest is claimed.
>
> x x x x x x x x x
>
> Sec. 107. *Surrender of withheld duplicate certificates.* Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu

---

[47] *Rollo*, p. 14.

thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

Further, RTC Branch 11, after trial on the merits of Civil Case No. 2001-2-3230, found for Magrare, Palcat and Bayombong. That decision has attained finality and was entered in the Book of Judgments. The trial court was correct in not touching upon the final and executory decision in that case.

*Petitioner is not a Buyer in Good Faith*

But even assuming that the mortgage was valid, petitioner can hardly be considered a buyer in good faith. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property.[48]

As discussed above, petitioner had notice as early as 2001 of the adverse claims of Magrare, Palcat and Bayombong. The decision in Civil Case No. 2001-2-3230 became final and executory before the Certificate of Sale was issued by the Provincial Sheriff on 14 July 2004 in Civil Case No. 3345.

Without speculating as to petitioner's motivations in foreclosing on the mortgage, the law on the matter is clear. Preference is given to the prior registered adverse claim because registration is the operative act that binds or affects the land insofar as third persons are concerned.[49] Thus, upon registration of respondents' adverse claims, notice was given the whole world, including petitioner.

Hence, the trial court's dismissal of the case against Magrare and Palcat is in order. There is no need for us to discuss petitioner's other assignments of error. Besides, the same issues were sufficiently addressed by the Court of Appeals.

---

[48] *Martinez v. Garcia*, 625 Phil. 377, 392 (2010).

[49] *Spouses Chua v. Judge Gutierrez*, 652 Phil. 84 (2010).

*Heirs of Bayombong are Indispensable Parties*

However, we find reversible error on the part of the trial court in not impleading the heirs of Bayombong. Indispensable parties are parties in interest without whom no final determination can be had of an action.[50] Petitioner's action was for the cancellation of titles, including TCT No. T-22376. In its Order dated 17 January 2005,[51] the trial court itself recognized that the controversy was contentious in nature, and required the participation of Bayombong, among others. Bayombong, like respondents Magrare and Palcat stood to be benefited or prejudiced by the outcome of the case. Since he was already dead at the time the case was filed by petitioner, the heirs of Bayombong stand in his stead not only as parties-in interest, but indispensable parties. Without the heirs of Bayombong to represent the interest of Bayombong, there can be no complete determination of all the issues presented by petitioner, particularly, in regard to TCT No. T-22376.

Failure to implead an indispensable party is not a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action.[52]

By denying petitioner's motion to implead the heirs of Bayombong due to technicalities, the trial court in effect deprived petitioner a full adjudication of the action, and the heirs of Bayombong any beneficial effects of the decision. Indeed, the dismissal of the petition as to Magrare and Palcat greatly benefits them as the controversy regarding TCT Nos. T-22374 and T-22375 is finally laid to rest. Not so with the heirs of Bayombong. We note that the trial court's decision discusses TCT Nos. T-22374 and T-22375. The records do not contain any direct refutation of the claim of petitioner as to TCT No. T-22376, as could be

---

[50] Rules of Court, Rule 3, Sec. 7.

[51] *Supra*, note 22.

[52] *Living @ Sense, Inc. v. Malayan Insurance Company, Inc.*, 695 Phil. 861, 866-867 (2012).

expected since there were no parties impleaded to defend such interest. Hence, we cannot, without depriving petitioner due process, extend the trial court's decision to TCT No. T-22376.

Given the Court's authority to order the inclusion of an indispensable party at any stage of the proceedings,[53] the heirs of Bayombong are hereby ordered impleaded as parties-defendants. Since the action has been disposed of as regards Magrare and Palcat, the action is to proceed solely against the heirs of Bayombong, once they are properly impleaded.[54]

We note that the counsel representing Magrare and Palcat is the same counsel that represented Magrare, Palcat and Bayombong in Civil Case No. 2001-2-3230. There is no information on record, apart from petitioner's allegation, whether or not counsel informed the court of the death of Bayombong, in accordance with Section 16, Rule 3 of the Rules of Court. Nevertheless, for expediency, Atty. Alexis C. Salvani is directed to provide the trial court and petitioner the full names and addresses of the heirs of Bayombong to enable the trial court to properly implead them.

**WHEREFORE**, we **GRANT** the petition **IN PART**. The Decision dated 29 February 2012 and Resolution dated 28 February 2013 of the Court of Appeals in CA-G.R. CEB CV No. 02306, affirming the Order dated 2 October 2007 of the Regional Trial Court, Branch 12, San Jose, Antique in RTC Cad. Case No. 2004-819, Cad. Record No. 936, is: (1) **AFFIRMED** insofar as the dismissal of the case with respect to Nelson P. Magrare and Evangeline M. Palcat; and (2) **REVERSED** insofar as the dismissal of the case pertaining to TCT No. T-22376. The heirs of Rodolfo Bayombong are **ORDERED IMPLEADED** as parties-defendants and the trial court is directed to proceed with the case pertaining to TCT No. T-22376. Atty. Alexis C. Salvani is further directed to provide the full names and addresses of the heirs of Bayombong.

---

[53] *Pacaña-Contreras v. Rovila Water Supply, Inc.*, G.R. No. 168979, 2 December 2013, 711 SCRA 219, 245.

[54] Rules of Court, Rule 36, Sec. 4.

**SO ORDERED.**

*Brion, del Castillo, Mendoza,* and *Leonen, JJ.,* concur.

---

**SECOND DIVISION**

[G.R. No. 209330. January 11, 2016]

**SECRETARY LEILA DE LIMA, ASSISTANT STATE PROSECUTOR STEWART ALLAN A. MARIANO, ASSISTANT STATE PROSECUTOR VIMAR M. BARCELLANO and ASSISTANT STATE PROSECUTOR GERARD E. GAERLAN,** *petitioners, vs.* **MARIO JOEL T. REYES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE DETERMINATION BY THE DEPARTMENT OF JUSTICE OF THE EXISTENCE OF PROBABLE CAUSE IS NOT A QUASI-JUDICIAL PROCEEDING; THE ACTIONS, HOWEVER, OF THE SECRETARY OF JUSTICE IN AFFIRMING OR REVERSING THE FINDINGS OF THE PROSECUTORS MAY STILL BE SUBJECT TO JUDICIAL REVIEW IF IT IS TAINTED WITH GRAVE ABUSE OF DISCRETION.—** The determination by the Department of Justice of the existence of probable cause is not a quasi-judicial proceeding. However, the actions of the Secretary of Justice in affirming or reversing the findings of prosecutors may still be subject to judicial review if it is tainted with grave abuse of discretion. Under the Rules of Court, a writ of certiorari is directed against "any tribunal, board or officer exercising judicial or quasi-judicial functions." A quasi-judicial function is "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." Otherwise stated, an administrative agency performs quasi-judicial functions if it renders awards, determines the rights of opposing parties, or if their decisions have the same effect as the judgment of a court.

**2. ID.; ID.; ID.; PROHIBITION; THE SECRETARY OF JUSTICE'S REVIEW OF THE RESOLUTIONS OF PROSECUTORS IS NOT A MINISTERIAL FUNCTION.—** A writ of prohibition, on the other hand, is directed against "the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions." The Department of Justice is not a court of law and its officers do not perform quasi-judicial functions. The Secretary of Justice's review of the resolutions of prosecutors is also not a ministerial function. An act is considered ministerial if "an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done." In contrast, an act is considered discretionary "[i]f the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed." Considering that "full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation," the functions of the prosecutors and the Secretary of Justice are not ministerial.

**3. ID.; ID.; ID.; ANY QUESTION WHETHER THE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING, REVERSING, OR MODIFYING THE RESOLUTIONS OF PROSECUTORS MAY BE THE SUBJECT OF A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.—** However, even when an administrative agency does not perform a judicial, quasi-judicial, or ministerial function, the Constitution mandates the exercise of judicial review when there is an allegation of grave abuse of discretion. In *Auto Prominence Corporation v. Winterkorn*: In ascertaining whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in his determination

of the existence of probable cause, the party seeking the writ of certiorari must be able to establish that the Secretary of Justice exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough; it must amount to lack or excess of jurisdiction. Excess of jurisdiction signifies that he had jurisdiction over the case, but (he) transcended the same or acted without authority. Therefore, any question on whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming, reversing, or modifying the resolutions of prosecutors may be the subject of a petition for certiorari under Rule 65 of the Rules of Court.

**4. ID.; ID.; ID.; THE SECRETARY OF JUSTICE DID NOT ACT IN AN ARBITRARY AND DESPOTIC MANNER, BY REASON OF PASSION OR PERSONAL HOSTILITY IN ISSUING DEPARTMENT ORDER NO. 710 CREATING A SECOND PANEL TO MAKE SURE THAT ALL EVIDENCE, INCLUDING THE EVIDENCE THAT FIRST PANEL REFUSED TO ADMIT, WILL BE INVESTIGATED.—** The Secretary of Justice exercises control and supervision over prosecutors and it is within her authority to affirm, nullify, reverse, or modify the resolutions of her prosecutors. x x x Section 4 of Republic Act No. 10071 also gives the Secretary of Justice the authority to *directly* act on any "probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor." Accordingly, the Secretary of Justice may step in and order a reinvestigation even without a prior motion or petition from a party in order to prevent any probable miscarriage of justice. Dr. Inocencio-Ortega filed a Motion to Re-Open the preliminary investigation before the First Panel in order to admit as evidence mobile phone conversations between Edrad and respondent and argued that these phone conversations tend to prove that respondent was the mastermind of her husband's murder. The First Panel, however, dismissed the Motion on the ground that it was filed out of time. x x x In the same Resolution, the First Panel denied Dr. Inocencio-Ortega's Motion for Partial Reconsideration on the ground that "the evidence on record does not suffice to

establish probable cause." It was then that the Secretary of Justice issued Department Order No. 710. x x x Under these circumstances, it is clear that the Secretary of Justice issued Department Order No. 710 because she had reason to believe that the First Panel's refusal to admit the additional evidence may cause a probable miscarriage of justice to the parties. The Second Panel was created not to overturn the findings and recommendations of the First Panel but to make sure that *all* the evidence, including the evidence that the First Panel refused to admit, was investigated. Therefore, the Secretary of Justice did not act in an "arbitrary and despotic manner, by reason of passion or personal hostility." Accordingly, Dr. Inocencio-Ortega's Petition for Review before the Secretary of Justice was rendered moot with the issuance by the Second Panel of the Resolution dated March 12, 2012 and the filing of the Information against respondent before the trial court.

**5. ID.; ID.; CRIMINAL PROCEDURE; THE FILING AND ISSUANCE BY THE TRIAL COURT OF RESPONDENT'S WARRANT OF ARREST RENDERED THE INSTANT PETITION MOOT; A PRELIMINARY INVESTIGATION IS MERELY PREPARATORY TO TRIAL AND IS NOT A TRIAL ON THE MERITS AND ANY ALLEGED IRREGULARITY IN AN INVESTIGATION'S CONDUCT DOES NOT RENDER THE INFORMATION VOID NOR IMPAIR ITS VALIDITY.—** The filing of the information and the issuance by the trial court of the respondent's warrant of arrest has already rendered this Petition moot. It is settled that executive determination of probable cause is different from the judicial determination of probable cause. x x x The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed. A preliminary investigation is "merely inquisitorial," and is only conducted to aid the prosecutor in preparing the information. It serves a two-fold purpose: first, to protect the innocent against wrongful prosecutions; and second, to spare the state from using its funds and resources in useless prosecutions. In *Salonga v. Cruz-Paño*: The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from

an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. Moreover, a preliminary investigation is merely preparatory to a trial. It is not a trial on the merits. An accused's right to a preliminary investigation is merely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity.

**6. ID.; ID.; ID.; IT WOULD BE MORE PRUDENT FOR THE SECRETARY OF JUSTICE TO REFRAIN FROM ENTERTAINING THE PETITION CONSIDERING THAT THE TRIAL COURT ALREADY ISSUED A WARRANT OF ARREST AGAINST RESPONDENT; THE ISSUANCE OF THE WARRANT SIGNIFIES THAT THE TRIAL COURT HAS MADE AN INDEPENDENT DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE.—** Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. x x x Thus, it would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent. The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause. x x x Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment. The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate

remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot. The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioners.

*Custodio & Acorda Sicam De Castro & Panganiban Law Offices* for respondent.

**D E C I S I O N**

**LEONEN, *J.*:**

The Secretary of Justice has the discretion, upon motion or *motu proprio*, to act on any matter that may cause a probable miscarriage of justice in the conduct of a preliminary investigation. This action may include, but is not limited to, the conduct of a reinvestigation. Furthermore, a petition for certiorari under Rule 65 questioning the regularity of preliminary investigation becomes moot after the trial court completes its determination of probable cause and issues a warrant of arrest.

This Petition for Review on Certiorari assails the Decision[1] dated March 19, 2013 and Resolution[2] dated September 27, 2013 of the Court of Appeals, which rendered null and void

---

[1] *Rollo*, pp. 52-71. The Decision was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Special Tenth Division of Five. Associate Justices Noel G. Tijam and Romeo F. Barza dissented. Associate Justice Acosta penned a Separate Concurring Opinion.

[2] *Id*. at 121-126. The Resolution was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Special Tenth Division of Five. Associate Justices Noel G. Tijam and Romeo F. Barza voted to grant the Motion.

Department of Justice Order No. 710[3] issued by the Secretary of Justice.[4] The Department Order created a second panel of prosecutors to conduct a reinvestigation of a murder case in view of the first panel of prosecutors' failure to admit the complainant's additional evidence.

Dr. Gerardo Ortega (Dr. Ortega), also known as "Doc Gerry," was a veterinarian and anchor of several radio shows in Palawan. On January 24, 2011, at around 10:30 am, he was shot dead inside the Baguio Wagwagan Ukay-ukay in San Pedro, Puerto Princesa City, Palawan.[5] After a brief chase with police officers, Marlon B. Recamata was arrested. On the same day, he made an extrajudicial confession admitting that he shot Dr. Ortega. He also implicated Rodolfo "Bumar" O. Edrad (Edrad), Dennis C. Aranas, and Armando "Salbakotah" R. Noel, Jr.[6]

On February 6, 2011, Edrad executed a Sinumpaang Salaysay before the Counter-Terrorism Division of the National Bureau of Investigation where he alleged that it was former Palawan Governor Mario Joel T. Reyes (former Governor Reyes) who ordered the killing of Dr. Ortega.[7]

On February 7, 2011, Secretary of Justice Leila De Lima issued Department Order No. 091[8] creating a special panel of prosecutors (First Panel) to conduct preliminary investigation. The First Panel was composed of Senior Assistant Prosecutor Edwin S. Dayog, Assistant State Prosecutor Bryan Jacinto S. Cacha, and Assistant State Prosecutor John Benedict D. Medina.[9]

On February 14, 2011, Dr. Patria Gloria Inocencio-Ortega (Dr. Inocencio-Ortega), Dr. Ortega's wife, filed a Supplemental

---

[3] *Id*. at 169.

[4] *Id*.

[5] *Id*. at 846, Department of Justice Resolution dated March 12, 2012.

[6] *Id*. at 53, Court of Appeals Decision dated March 19, 2013.

[7] *Id*.

[8] *Id*. at 1066.

[9] *Id*. at 54, Court of Appeals Decision.

Affidavit-Complaint implicating former Governor Reyes as the mastermind of her husband's murder. Former Governor Reyes' brother, Coron Mayor Mario T. Reyes, Jr., former Marinduque Governor Jose T. Carreon, former Provincial Administrator Atty. Romeo Seratubias, Marlon Recamata, Dennis Aranas, Valentin Lesias, Arturo D. Regalado, Armando Noel, Rodolfo O. Edrad, and several John and Jane Does were also implicated.[10]

On June 8, 2011, the First Panel concluded its preliminary investigation and issued the Resolution[11] dismissing the Affidavit-Complaint.

On June 28, 2011, Dr. Inocencio-Ortega filed a Motion to Re-Open Preliminary Investigation, which, among others, sought the admission of mobile phone communications between former Governor Reyes and Edrad.[12] On July 7, 2011, while the Motion to Re-Open was still pending, Dr. Inocencio-Ortega filed a Motion for Partial Reconsideration Ad Cautelam of the Resolution dated June 8, 2011. Both Motions were denied by the First Panel in the Resolution[13] dated September 2, 2011.[14]

On September 7, 2011, the Secretary of Justice issued Department Order No. 710 creating a new panel of investigators (Second Panel) to conduct a reinvestigation of the case. The Second Panel was composed of Assistant State Prosecutor Stewart Allan M. Mariano, Assistant State Prosecutor Vimar M. Barcellano, and Assistant State Prosecutor Gerard E. Gaerlan.

Department Order No. 710 ordered the reinvestigation of the case "in the interest of service and due process"[15] to address the offer of additional evidence denied by the First Panel in its

---

[10] *Id*. at 53-54.

[11] *Id*. at 546-567.

[12] *Id*. at 54, Court of Appeals Decision.

[13] *Id*. at 726-731.

[14] *Id*. at 54, Court of Appeals Decision.

[15] *Id*. at 169.

Resolution dated September 2, 2011. The Department Order also revoked Department Order No. 091.[16]

Pursuant to Department Order No. 710, the Second Panel issued a Subpoena requiring former Governor Reyes to appear before them on October 6 and 13, 2011 and to submit his counter-affidavit and supporting evidence.[17]

On September 29, 2011, Dr. Inocencio-Ortega filed before the Secretary of Justice a Petition for Review (Ad Cautelam) assailing the First Panel's Resolution dated September 2, 2011.[18]

On October 3, 2011, former Governor Reyes filed before the Court of Appeals a Petition for Certiorari and Prohibition with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order assailing the creation of the Second Panel. In his Petition, he argued that the Secretary of Justice gravely abused her discretion when she constituted a new panel. He also argued that the parties were already afforded due process and that the evidence to be addressed by the reinvestigation was neither new nor material to the case.[19]

On March 12, 2012, the Second Panel issued the Resolution finding probable cause and recommending the filing of informations on all accused, including former Governor Reyes.[20] Branch 52 of the Regional Trial Court of Palawan subsequently issued warrants of arrest on March 27, 2012.[21] However, the warrants against former Governor Reyes and his brother were ineffective since the two allegedly left the country days before the warrants could be served.[22]

---

[16] *Id*. at 55, Court of Appeals Decision.

[17] *Id*. at 170.

[18] *Id*. at 55, Court of Appeals Decision.

[19] *Id*.

[20] *Id*. at 56.

[21] *Id*.

[22] *Id*. at 20, Petition for Review.

On March 29, 2012, former Governor Reyes filed before the Secretary of Justice a Petition for Review Ad Cautelam[23] assailing the Second Panel's Resolution dated March 12, 2012.

On April 2, 2012, he also filed before the Court of Appeals a Supplemental Petition for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order impleading Branch 52 of the Regional Trial Court of Palawan.[24]

In his Supplemental Petition, former Governor Reyes argued that the Regional Trial Court could not enforce the Second Panel's Resolution dated March 12, 2012 and proceed with the prosecution of his case since this Resolution was void.[25]

On March 19, 2013, the Court of Appeals, in a Special Division of Five, rendered the Decision[26] declaring Department Order No. 710 null and void and reinstating the First Panel's Resolutions dated June 8, 2011 and September 2, 2011.

According to the Court of Appeals, the Secretary of Justice committed grave abuse of discretion when she issued Department Order No. 710 and created the Second Panel. The Court of Appeals found that she should have modified or reversed the Resolutions of the First Panel pursuant to the 2000 NPS Rule on Appeal[27] instead of issuing Department Order No. 710 and creating the Second Panel. It found that because of her failure to follow the procedure in the 2000 NPS Rule on Appeal, two Petitions for Review Ad Cautelam filed by the opposing parties were pending before her.[28]

The Court of Appeals also found that the Secretary of Justice's admission that the issuance of Department Order No. 710 did

---

[23] *Id.* at 880-944.

[24] *Id.* at 56, Court of Appeals Decision.

[25] *Id.*

[26] *Id.* at 52-71.

[27] *See* 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, Sec. 12.

[28] *Rollo,* pp. 61-65, Court of Appeals Decision.

not set aside the First Panel's Resolution dated June 8, 2011 and September 2, 2011 "[compounded] the already anomalous situation."[29] It also stated that Department Order No. 710 did not give the Second Panel the power to reverse, affirm, or modify the Resolutions of the First Panel; therefore, the Second Panel did not have the authority to assess the admissibility and weight of any existing or additional evidence.[30]

The Secretary of Justice, the Second Panel, and Dr. Inocencio-Ortega filed a Motion for Reconsideration of the Decision dated March 19, 2013. The Motion, however, was denied by the Court of Appeals in the Resolution[31] dated September 27, 2013.

In its Resolution, the Court of Appeals stated that the Secretary of Justice had not shown the alleged miscarriage of justice sought to be prevented by the creation of the Second Panel since both parties were given full opportunity to present their evidence before the First Panel. It also ruled that the evidence examined by the Second Panel was not additional evidence but "forgotten evidence"[32] that was already available before the First Panel during the conduct of the preliminary investigation.[33]

Aggrieved, the Secretary of Justice and the Second Panel filed the present Petition for Review on Certiorari[34] assailing the Decision dated March 19, 2013 and Resolution dated September 27, 2013 of the Court of Appeals. Respondent Mario Joel T. Reyes filed his Comment[35] to the Petition in compliance with this court's Resolution dated February 17, 2014.[36] Petitioners' Reply[37]

---

[29] *Id*. at 66.

[30] *Id*. at 67.

[31] *Id*. at 121-126.

[32] *Id*. at 124, Court of Appeals Resolution.

[33] *Id*. at 123-126.

[34] *Id*. at 10-50.

[35] *Id*. at 1028-1066.

[36] *Id*. at 1021.

[37] *Id*. at 1114-1132.

to the Comment was filed on October 14, 2014 in compliance with this court's Resolution dated June 23, 2014.[38]

Petitioners argue that the Secretary of Justice acted within her authority when she issued Department Order No. 710. They argue that her issuance was a purely executive function and not a quasi-judicial function that could be the subject of a petition for certiorari or prohibition.[39] In their submissions, they point out that under Republic Act No. 10071 and the 2000 NPS Rule on Appeal, the Secretary of Justice has the power to create a new panel of prosecutors to reinvestigate a case to prevent a miscarriage of justice.[40]

Petitioners' position was that the First Panel "appear[ed] to have ignored the rules of preliminary investigation"[41] when it refused to receive additional evidence that would have been crucial for the determination of the existence of probable cause.[42] They assert that respondent was not deprived of due process when the reinvestigation was ordered since he was not prevented from presenting controverting evidence to Dr. Inocencio-Ortega's additional evidence.[43] Petitioners argue that since the Information had been filed, the disposition of the case was already within the discretion of the trial court.[44]

Respondent, on the other hand, argues that the Secretary of Justice had no authority to order *motu proprio* the reinvestigation of the case since Dr. Inocencio-Ortega was able to submit her alleged new evidence to the First Panel when she filed her Motion for Partial Reconsideration. He argues that all parties had already been given the opportunity to present their evidence

---

[38] *Id.* at 1084.

[39] *Id.*at 26-33, Petition for Review.

[40] *Id.* at 34-35.

[41] *Id.* at 34.

[42] *Id.* at 24-36.

[43] *Id.* at 1116-1117, Reply.

[44] *Id.* at 41.

before the First Panel so it was not necessary to conduct a reinvestigation.[45]

Respondent argues that the Secretary of Justice's discretion to create a new panel of prosecutors was not "unbridled"[46] since the 2000 NPS Rule on Appeal requires that there be compelling circumstances for her to be able to designate another prosecutor to conduct the reinvestigation.[47] He argues that the Second Panel's Resolution dated March 12, 2012 was void since the Panel was created by a department order that was beyond the Secretary of Justice's authority to issue. He further argues that the trial court did not acquire jurisdiction over the case since the Information filed by the Second Panel was void.[48]

The issues for this court's resolution are:

First, whether the Court of Appeals erred in ruling that the Secretary of Justice committed grave abuse of discretion when she issued Department Order No. 710, and with regard to this:

a. Whether the issuance of Department Order No. 710 was an executive function beyond the scope of a petition for certiorari or prohibition; and

b. Whether the Secretary of Justice is authorized to create *motu proprio* another panel of prosecutors in order to conduct a reinvestigation of the case.

Lastly, whether this Petition for Certiorari has already been rendered moot by the filing of the information in court, pursuant to *Crespo v. Mogul*.[49]

I

The determination by the Department of Justice of the existence of probable cause is not a quasi-judicial proceeding.

---

[45] *Id*. at 1045-1050, Comment.

[46] *Id*. at 1050.

[47] *Id*. at 1050-1052.

[48] *Id*. at 1059–1063.

[49] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

However, the actions of the Secretary of Justice in affirming or reversing the findings of prosecutors may still be subject to judicial review if it is tainted with grave abuse of discretion.

Under the Rules of Court, a writ of certiorari is directed against "any tribunal, board or officer exercising judicial or quasi-judicial functions."[50] A quasi-judicial function is "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."[51] Otherwise stated, an administrative agency performs quasi-judicial functions if it renders awards, determines the rights of opposing parties, or if their decisions have the same effect as the judgment of a court.[52]

In a preliminary investigation, the prosecutor does not determine the guilt or innocence of an accused. The prosecutor only determines "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[53] As such, the prosecutor does not perform quasi-judicial functions. In *Santos v. Go*:[54]

> [T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal

---

[50] RULES OF COURT, Rule 65, Sec. 1.

[51] *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*, G.R. No. 181381, July 20, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/181381.pdf> [Per *J.* Peralta, Third Division], *citing United Coconut Planters Bank v. E Ganzon, Inc.*, 609 Phil. 104, 122 (2009) [Per *J.* Chico-Nazario, Third Division].

[52] See *Santos v. Go*, 510 Phil. 137 (2005) [Per *J.* Quisumbing, First Division].

[53] RULES OF COURT, Rule 112, Sec. 1.

[54] 510 Phil. 137 (2005) [Per *J.* Quisumbing, First Division].

to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

Though some cases describe the public prosecutors power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point. A quasi-judicial body is as an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making. A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the formers order or resolutions.[55]

In *Spouses Dacudao v. Secretary of Justice*,[56] a petition for certiorari, prohibition, and mandamus was filed against the Secretary of Justice's issuance of a department order. The assailed order directed all prosecutors to forward all cases already filed against Celso de los Angeles of the Legacy Group to the Secretariat of the Special Panel created by the Department of Justice.

This court dismissed the petition on the ground that petitions for certiorari and prohibition are directed only to tribunals that exercise judicial or quasi-judicial functions. The issuance of

---

[55] *Id*. at 147-148, *citing Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001) [Per *J.* Bellosillo, Second Division]; *Cojuangco, Jr. v. Presidential Commission on Good Government*, 268 Phil. 235 (1990) [Per *J.* Gancayco, *En Banc*]; *Koh v. Court of Appeals*, 160-A Phil. 1034 (1975) [Per *J.* Esguerra, First Division]; *Andaya v. Provincial Fiscal of Surigao del Norte*, 165 Phil. 134 (1976) [Per *J.* Fernando, First Division]; *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[56] G.R. No. 188056, January 8, 2013, 688 SCRA 109 [Per *J.* Bersamin, *En Banc*].

the department order was a purely administrative or executive function of the Secretary of Justice. While the Department of Justice may perform functions similar to that of a court of law, it is not a quasi-judicial agency:

*The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the findings of a public prosecutor on the finding of probable cause in any case.* Indeed, in *Bautista v. Court of Appeals*, the Supreme Court has held that a preliminary investigation is not a quasi-judicial proceeding, stating:

> . . . [t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.

There may be some decisions of the Court that have characterized the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature. Still, this characterization is true only to the extent that the public prosecutor, like a quasi-judicial body, is an officer of the executive department exercising powers akin to those of a court of law.

But the limited similarity between the public prosecutor and a quasi-judicial body quickly ends there. For sure, a quasi-judicial body is an organ of government other than a court of law or a legislative office that affects the rights of private parties through either adjudication or rule-making; it performs adjudicatory functions, and its awards and adjudications determine the rights of the parties coming before it; its decisions have the same effect as the judgments of a court of law. In contrast, that is not the effect whenever a public prosecutor conducts a preliminary investigation to determine probable

cause in order to file a criminal information against a person properly charged with the offense, or whenever the Secretary of Justice reviews the public prosecutor's orders or resolutions.[57] (Emphasis supplied)

Similarly, in *Callo-Claridad v. Esteban*,[58] we have stated that a petition for review under Rule 43 of the Rules of Court cannot be brought to assail the Secretary of Justice's resolution dismissing a complaint for lack of probable cause since this is an "essentially executive function":[59]

> A petition for review under Rule 43 is a mode of appeal to be taken only to review the decisions, resolutions or awards by the quasi-judicial officers, agencies or bodies, particularly those specified in Section 1 of Rule 43. In the matter before us, however, the Secretary of Justice was not an officer performing a quasi-judicial function. In reviewing the findings of the OCP of Quezon City on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.[60]

A writ of prohibition, on the other hand, is directed against "the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions."[61] The Department of Justice is not a court of law and its officers do not perform quasi-judicial functions. The Secretary of Justice's review of the resolutions of prosecutors is also not a ministerial function.

An act is considered ministerial if "an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own

---

[57] *Id*. at 120-121, citing *Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001) [Per *J.* Bellosillo, Second Division].

[58] G.R. No. 191567, March 20, 2013, 694 SCRA 185 [Per *J*. Bersamin, First Division].

[59] *Id*. at 197.

[60] *Id.* at 196-197, citing *Bautista v. Court of Appeals*, 413 Phil. 159 (2001) [Per *J*. Bellosillo, Second Division].

[61] RULES OF COURT, Rule 65, Sec. 2.

judgment, upon the propriety or impropriety of the act done."[62] In contrast, an act is considered discretionary "[i]f the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed."[63] Considering that "full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation,"[64] the functions of the prosecutors and the Secretary of Justice are not ministerial.

However, even when an administrative agency does not perform a judicial, quasi-judicial, or ministerial function, the Constitution mandates the exercise of judicial review when there is an allegation of grave abuse of discretion.[65] In *Auto Prominence Corporation v. Winterkorn*:[66]

> In ascertaining whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in his determination of the existence of probable cause, the party seeking the writ of certiorari must be able to establish that the Secretary of Justice exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough; it

---

[62] *Ferrer, Jr. v. Bautista*, G.R. No. 210551, June 30, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/210551.pdf> [Per *J.* Peralta, *En Banc*], *citing Ongsuco, et al. vs. Hon. Malones*, 619 Phil. 492, 508 (2009) [Per *J.* Chico-Nazario, Third Division].

[63] *Carolino v. Senga*, G.R. No. 189649, April 20, 2015 http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/189649. pdf> [Per *J.* Peralta, Third Division], *citing Heirs of Spouses Venturillo v. Judge Quitain*, 536 Phil. 839, 846 (2006) [Per *J.* Tinga, Third Division].

[64] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591 (2007) [Per *J.* Austria-Martinez, Third Division], *citing Metropolitan Bank & Trust Co. v. Tonda*, 392 Phil. 797, 814 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[65] *See* CONST., Art. VIII, Sec. 1. See also *Unilever, Philippines v. Tan*, G.R. No. 179367, January 29, 2014, 715 SCRA 36 [Per *J.* Brion, Second Division].

[66] 597 Phil. 47 (2009) [Per *J.* Chico-Nazario, Third Division].

must amount to lack or excess of jurisdiction. Excess of jurisdiction signifies that he had jurisdiction over the case, but (he) transcended the same or acted without authority.[67]

Therefore, any question on whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming, reversing, or modifying the resolutions of prosecutors may be the subject of a petition for certiorari under Rule 65 of the Rules of Court.

II

Under existing laws, rules of procedure, and jurisprudence, the Secretary of Justice is authorized to issue Department Order No. 710.

Section 4 of Republic Act No. 10071[68] outlines the powers granted by law to the Secretary of Justice. The provision reads:

> Section 4. Power of the Secretary of Justice. – The power vested in the Secretary of Justice includes authority to act directly on any matter involving national security or a probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor and to review, reverse, revise, modify or affirm on appeal or petition for review as the law or the rules of the Department of Justice (DOJ) may provide, final judgments and orders of the prosecutor general, regional prosecutors, provincial prosecutors, and city prosecutors.

A criminal prosecution is initiated by the filing of a complaint to a prosecutor who shall then conduct a preliminary investigation in order to determine whether there is probable cause to hold the accused for trial in court.[69] The recommendation of the investigating prosecutor on whether to dismiss the complaint or to file the corresponding information in court is still subject

---

[67] *Id*. at 57, *citing Sarigumba v. Sandiganbayan*, 491 Phil. 704 (2005) [Per *J*. Callejo, Sr., Second Division].

[68] The Prosecution Service Act of 2010.

[69] See RULES OF COURT, Rule 110, Sec. 1(a) and Rule 112, Sec. 1.

to the approval of the provincial or city prosecutor or chief state prosecutor.[70]

However, a party is not precluded from appealing the resolutions of the provincial or city prosecutor or chief state prosecutor to the Secretary of Justice. Under the 2000 NPS Rule on Appeal,[71] appeals may be taken within 15 days within receipt of the resolution by filing a verified petition for review before the Secretary of Justice.[72]

In this case, the Secretary of Justice designated a panel of prosecutors to investigate on the Complaint filed by Dr. Inocencio-Ortega. The First Panel, after conduct of the preliminary investigation, resolved to dismiss the Complaint on the ground that the evidence was insufficient to support a finding of probable cause. Dr. Inocencio-Ortega filed a Motion to Re-Open and a Motion for Partial Investigation, which were both denied by the First Panel. Before Dr. Inocencio-Ortega could file a petition for review, the Secretary of Justice issued Department Order No. 710 and constituted another panel of prosecutors to reinvestigate the case. The question therefore is whether, under the 2000 NPS Rule on Appeal, the Secretary of Justice may, even without a pending petition for review, *motu proprio* order the conduct of a reinvestigation.

The 2000 NPS Rule on Appeal requires the filing of a petition for review before the Secretary of Justice can reverse, affirm, or modify the appealed resolution of the provincial or city prosecutor or chief state prosecutor.[73] The Secretary of Justice may also order the conduct of a reinvestigation in order to resolve the petition for review. Under Section 11:

---

[70] RULES OF COURT, Rule 112, Sec. 4.

[71] Department Circular No. 70 (2000).

[72] 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, Secs. 2 and 4.

[73] 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, Sec. 12.

SECTION 11. Reinvestigation. If the Secretary of Justice finds it necessary to reinvestigate the case, the reinvestigation shall be held by the investigating prosecutor, unless, for compelling reasons, another prosecutor is designated to conduct the same.

Under Rule 112, Section 4 of the Rules of Court, however, the Secretary of Justice may *motu proprio* reverse or modify resolutions of the provincial or city prosecutor or the chief state prosecutor even without a pending petition for review. Section 4 states:

SEC. 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

. . . . . .

*If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.* The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

The Secretary of Justice exercises control and supervision over prosecutors and it is within her authority to affirm, nullify, reverse, or modify the resolutions of her prosecutors. In *Ledesma v. Court of Appeals*:[74]

Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said

[74] 344 Phil. 207 (1997) [Per *J.* Panganiban, Third Division].

prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

> (1) Supervision and Control. Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units[.][75]

Similarly, in *Rural Community Bank of Guimba v. Hon. Talavera*:[76]

> The actions of prosecutors are not unlimited; they are subject to review by the secretary of justice who may affirm, nullify, reverse or modify their actions or opinions. Consequently the secretary may direct them to file either a motion to dismiss the case or an information against the accused.
>
> In short, the secretary of justice, who has the power of supervision and control over prosecuting officers, is the ultimate authority who decides which of the conflicting theories of the complainants and the respondents should be believed.[77]

Section 4 of Republic Act No. 10071 also gives the Secretary of Justice the authority to *directly* act on any "probable miscarriage of justice within the jurisdiction of the prosecution

---

[75] *Id.* at 228-229.

[76] A.M. No. RTJ-05-1909, 495 Phil. 30 (2005) [Per *J.* Panganiban, *En Banc*].

[77] *Id.* at 41-42, *citing Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996) [Per *J.* Davide, Jr., *En Banc*]; *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*]; *Jalandoni v. Secretary Drilon*, 383 Phil. 855 (2000) [Per *J.* Buena, Second Division]; *Vda. de Jacob v. Puno*, 216 Phil. 138 (1984) [Per *J.* Relova, *En Banc*].

staff, regional prosecution office, and the provincial prosecutor or the city prosecutor." Accordingly, the Secretary of Justice may step in and order a reinvestigation even without a prior motion or petition from a party in order to prevent any probable miscarriage of justice.

Dr. Inocencio-Ortega filed a Motion to Re-Open the preliminary investigation before the First Panel in order to admit as evidence mobile phone conversations between Edrad and respondent and argued that these phone conversations tend to prove that respondent was the mastermind of her husband's murder. The First Panel, however, dismissed the Motion on the ground that it was filed out of time. The First Panel stated:

> Re-opening of the preliminary investigation for the purpose of receiving additional evidence presupposes that the case has been submitted for resolution but no resolution has been promulgated therein by the investigating prosecutor. Since a resolution has already been promulgated by the panel of prosecutors in this case, the motion to re-open the preliminary investigation is not proper and has to be denied.[78]

In the same Resolution, the First Panel denied Dr. Inocencio-Ortega's Motion for Partial Reconsideration on the ground that "the evidence on record does not suffice to establish probable cause."[79] It was then that the Secretary of Justice issued Department Order No. 710, which states:

> In the interest of service and due process, and to give both parties all the reasonable opportunity to present their evidence during the preliminary investigation, a new panel is hereby created composed of the following for the purpose of conducting a reinvestigation . . . .
>
> . . . . . .
>
> *The reinvestigation in this case is hereby ordered to address the offer of additional evidence by the complainants, which was denied by the former panel in its Resolution of 2 September 2011 on the ground that an earlier resolution has already been*

---

[78] *Rollo,* p. 737, Resolution dated September 2, 2011.

[79] *Id.*

*promulgated prior to the filing of the said motion*, and such other issues which may be raised before the present panel.[80] (Emphasis supplied)

In her reply-letter dated September 29, 2011 to respondent's counsel, the Secretary of Justice further explained that:

> The order to reinvestigate was dictated by substantial justice and our desire to have a comprehensive investigation. We do not want any stone unturned, or any evidence overlooked. As stated in D.O. No. 710, we want to give "both parties all the reasonable opportunity to present their evidence."[81]

Under these circumstances, it is clear that the Secretary of Justice issued Department Order No. 710 because she had reason to believe that the First Panel's refusal to admit the additional evidence may cause a probable miscarriage of justice to the parties. The Second Panel was created not to overturn the findings and recommendations of the First Panel but to make sure that *all* the evidence, including the evidence that the First Panel refused to admit, was investigated. Therefore, the Secretary of Justice did not act in an "arbitrary and despotic manner, by reason of passion or personal hostility."[82]

Accordingly, Dr. Inocencio-Ortega's Petition for Review before the Secretary of Justice was rendered moot with the issuance by the Second Panel of the Resolution dated March 12, 2012 and the filing of the Information against respondent before the trial court.

III

The filing of the information and the issuance by the trial court of the respondent's warrant of arrest has already rendered this Petition moot.

---

[80] *Id*. at 169.

[81] *Id*. at 1067.

[82] *Auto Prominence Corporation v. Winterkorn*, 597 Phil. 47 (2009) [Per *J.* Chico-Nazario, Third Division].

It is settled that executive determination of probable cause is different from the judicial determination of probable cause. In *People v. Castillo and Mejia*:[83]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[84] (Emphasis supplied)

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.[85]

---

[83] 607 Phil. 754 (2009) [Per *J.* Quisumbing, Second Division].

[84] *Id*. at 764-765, *citing Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per *J.* Regalado, *En Banc*]; *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620-621 (1996) [Per *J.* Davide, Jr., *En Banc*]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per *J.* Panganiban, *En Banc*].

[85] See *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

A preliminary investigation is "merely inquisitorial,"[86] and is only conducted to aid the prosecutor in preparing the information.[87] It serves a two-fold purpose: first, to protect the innocent against wrongful prosecutions; and second, to spare the state from using its funds and resources in useless prosecutions. In *Salonga v. Cruz-Paño*:[88]

> The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.[89]

Moreover, a preliminary investigation is merely preparatory to a trial. It is not a trial on the merits. An accused's right to a preliminary investigation is merely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity. In *Lozada v. Hernandez*:[90]

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured,

---

[86] *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 357 [Per *J.* Nocon, *En Banc*].

[87] *Id.*

[88] 219 Phil. 402 (1985) [Per *J.* Gutierrez, Jr., *En Banc*].

[89] *Id*. at 428, *citing Trocio v. Manta*, 203 Phil. 618 (1982) [Per *J.* Relova, First Division]; and *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per *J.* Laurel, *En Banc*].

[90] 92 Phil. 1051 (1953) [Per *J.* Reyes, *En Banc*].

rather than upon the phrase "due process of law."[91] (Citations omitted)

*People v. Narca*[92] further states:

It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was probably committed by an accused. *In any case, the invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective*.[93] (Emphasis supplied)

Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. In *Crespo v. Mogul*:[94]

---

[91] *Id*. at 1053, *citing U.S. v. Yu Tuico*, 34 Phil. 209 [Per *J.* Moreland, Second Division]; *People v. Badilla*, 48 Phil. 716 (1926) [Per *J.* Ostrand, *En Banc*]; II Moran, Rules of Court, 1952 ed., p. 673; *U.S. v. Grant and Kennedy*, 18 Phil. 122 (1910) [Per *J.* Trent, *En Banc*].

[92] 341 Phil. 696 (1997) [Per *J.* Francisco, Third Division].

[93] *Id*., citing *Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per *J.* Reyes, *En Banc*]; RULES OF COURT, Rule 112, Sec. 8; RULES OF COURT, Rule 112, Sec. 3(e); RULES OF COURT, Rule 112, Sec. 3(d); *Mercado v. Court of Appeals*, G.R. No. 109036, July 5, 1995, 245 SCRA 594 [Per *J.* Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 306 Phil. 567 (1983) [Per *J.* Escolin, *En Banc*]; *Webb v. De Leon*, G.R. No. 121234, August 23, 1995, 247 SCRA 652 [Per *J.* Puno, Second Division]; *Romualdez v. Sandiganbayan*, 313 Phil. 870 (1995) [Per *C.J.* Narvasa, *En Banc*]; and *People v. Gomez*, 202 Phil. 395 (1982) [Per *J.* Relova, First Division].

[94] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

*Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.*

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite

of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

*The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.*[95] (Emphasis supplied)

---

[95] *Id*. 474-476, *citing Herrera v. Barretto*, 25 Phil. 245 (1913) [Per *J.* Moreland, *En Banc*]; *U.S. v. Limsiongco*, 41 Phil. 94 (1920) [Per *J.* Malcolm, En Banc]; *De la Cruz v. Moir*, 36 Phil. 213 (1917) [Per *J.* Moreland, *En Banc*]; RULES OF COURT, Rule 110, Sec. 1; RULES OF CRIM. PROC. (1985), Sec. 1; 21 C.J.S. 123; Carrington; *U.S. v. Barreto*, 32 Phil. 444 (1917) [*Per Curiam, En Banc*]; *Asst. Provincial Fiscal of Bataan v. Dollete*, 103 Phil. 914 (1958) [Per *J.* Montemayor, *En Banc*]; *People v. Zabala*, 58 O. G. 5028; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per *C.J.* Teehankee, *En Banc*]; *People v. Beriales*, 162 Phil. 478 (1976) [Per *J.* Concepcion, Jr., Second Division]; *U.S. v. Despabiladeras*, 32 Phil. 442 (1915) [Per *J.* Carson, *En Banc*]; *U.S. v. Gallegos*, 37 Phil. 289 (1917) [Per *J.* Johnson, *En Banc*]; *People v. Hernandez*, 69 Phil. 672 (1964) [Per *J.* Labrador, *En Banc*]; *U.S. v. Labial*, 27 Phil. 82 (1914) [Per *J.* Carson, *En Banc*]; *U.S. v. Fernandez*, 17 Phil. 539 (1910) [Per *J.* Torres, *En Banc*]; *People v. Velez*, 77 Phil. 1026 (1947) [Per *J.* Feria, *En Banc*].

Thus, it would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent.[96] The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause. In *Mendoza v. People*:[97]

> While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.[98]

Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy"[99] provided by law. Since this

---

[96] *Rollo,* p. 56, Court of Appeals Decision.

[97] G.R. No. 197293, April 21, 2014, 722 SCRA 647 [Per *J.* Leonen, Third Division].

[98] *Id.* at 656.

[99] RULES OF COURT, Rule 65, Sec 1.

Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.

**WHEREFORE**, the Petition is **DISMISSED** for being moot. Branch 52 of the Regional Trial Court of Palawan is **DIRECTED** to proceed with prosecution of Criminal Case No. 26839.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 209387. January 11, 2016]

**ERWIN LIBO-ON DELA CRUZ,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES ANS SEIZURES; EXCLUSIONARY RULE; ITEMS SEIZED PURSUANT TO A REASONABLE SEARCH CONDUCTED BY PRIVATE PERSONS ARE NOT COVERED BY THE EXCLUSIONARY RULE.—** With regard to searches and seizures, the standard imposed on private persons is different from that imposed on state agents or authorized government authorities. In *People v. Marti*, the private forwarding and

shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages. The representative from the company found dried marijuana leaves in the packages. He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination. Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs. Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act. This court held that there was no unreasonable search or seizure. The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies. The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals. x x x Hence, by virtue of *Marti*, items seized pursuant to a reasonable search conducted by private persons are not covered by the exclusionary rule.

**2. ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT THE PORT SECURITY PERSONNEL'S FUNCTIONS HAS THE COLOR OF STATE-RELATED FUNCTIONS AND ARE DEEMED AGENTS OF THE GOVERNMENT, THE RULING IN *PEOPLE VS. MARTI* IS INAPPLICABLE IN THE PRESENT CASE.—** The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. While there is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function. In *People v. Malngan*, barangay tanod and the Barangay Chairman were deemed as law enforcement officers for purposes of applying Article III of the Constitution. In *People v. Lauga*, this court held that a "bantay bayan," in relation to the authority to conduct a custodial investigation under Article III, Section 12 of the Constitution, "has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]" Thus, with port security personnel's functions having the color

of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case.

**3. ID.; ID.; ID.; ID.; ID.; SEARCHES PURSUANT TO PORT SECURITY MEASURES ARE NOT UNREASONABLE *PER SE*; THE SECURITY MEASURES OF X-RAY SCANNING AND INSPECTION IN DOMESTIC PORTS ARE AKIN TO ROUTINE SECURITY PROCEDURES IN AIRPORTS.—** Nevertheless, searches pursuant to port security measures are not unreasonable *per se*. The security measures of x-ray scanning and inspection in domestic ports are akin to routine security procedures in airports. In *People v. Suzuki*, the accused "entered the pre-departure area of the Bacolod Airport Terminal." He was "bound for Manila via flight No. 132 of the Philippine Airlines and was carrying a small traveling bag and a box marked 'Bongbong's piaya.'" The accused "proceeded to the 'walk- through metal detector,' a machine which produces a red light and an alarm once it detects the presence of metallic substance or object." "Thereupon, the red light switched on and the alarm sounded, signifying the presence of metallic substance either in his person or in the box he was carrying." When the accused was asked to open the content of the box, he answered "open, open." Several packs of dried marijuana fruiting tops were then found inside the box. Suzuki argued that the box was only given to him as "pasalubong" by a certain Pinky, whom he had sexual relations with the night before. He did not know the contents of the box. This court in *Suzuki* found that the search conducted on the accused was a valid exception to the prohibition against warrantless searches as it was pursuant to a routine airport security procedure.

**4. ID.; ID.; ID.; ID.; ID.; THE PORT PERSONNEL'S ACTIONS PROCEED FROM THE AUTHORITY AND POLICY TO ENSURE THE SAFETY OF TRAVELERS AND VEHICLES WITHIN THE PORT.—** The port personnel's actions proceed from the authority and policy to ensure the safety of travelers and vehicles within the port. At this point, petitioner already submitted himself and his belongings to inspection by placing his bag in the x-ray scanning machine. The presentation of petitioner's bag for x-ray scanning was voluntary. Petitioner had the choice of whether to present the bag or not. He had the

option not to travel if he did not want his bag scanned or inspected. X-ray machine scanning and actual inspection upon showing of probable cause that a crime is being or has been committed are part of reasonable security regulations to safeguard the passengers passing through ports or terminals. Probable cause is: reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.

**5. ID.; ID.; ID.; ID.; IT IS NOT TOO BURDENSOME TO BE CONSIDERED AS AN AFFRONT TO AN ORDINARY PERSON'S RIGHT TO TRAVEL IF WEIGHED AGAINST THE SAFETY OF ALL PASSENGERS AND THE SECURITY OF PORT FACILITY; ANY PERCEIVED CURTAILMENT OF LIBERTY DUE TO THE PRESENTATION OF PERSON AND EFFECTS FOR PORT SECURITY MEASURES IS A PERMISSIBLE INTRUSION TO PRIVACY WHEN MEASURED AGAINST THE POSSIBLE HARM TO SOCIETY CAUSED BY LAWLESS PERSONS.—** It is not too burdensome to be considered as an affront to an ordinary person's right to travel if weighed against the safety of all passengers and the security in the port facility. As one philosopher said, the balance between authority and an individual's liberty may be confined within the harm that the individual may cause others. John Stuart Mill's "harm principle" provides: [T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading

him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. Any perceived curtailment of liberty due to the presentation of person and effects for port security measures is a permissible intrusion to privacy when measured against the possible harm to society caused by lawless persons.

6. **ID.; ID.; ID.; ID.; SEARCH CONDUCTED ON PETITIONER'S BAG IS VALID; THE SEARCH FALLS UNDER A VALID CONSENTED SEARCH DURING A ROUTINE PORT SECURITY PROCEDURE.—** We also cannot subscribe to petitioner's argument that there was no valid consent to the search because his consent was premised on his belief that there were no prohibited items in his bag. The defendant's belief that no incriminating evidence would be found does not automatically negate valid consent to the search when incriminating items are found. His or her belief must be measured against the totality of the circumstances. Again, petitioner voluntarily submitted himself to port security measures and, as he claimed during trial, he was familiar with the security measures since he had been traveling back and forth through the sea port. Consequently, we find respondent's argument that the present petition falls under a valid consented search and during routine port security procedures meritorious. The search conducted on petitioner's bag is valid.

7. **ID.; ID.; ID.; ID.; CONSENTED SEARCH CONDUCTED ON PETITIONER'S BAG IS DIFFERENT FROM A CUSTOMS SEARCH.—** The consented search conducted on petitioner's bag is different from a customs search. Customs searches, as exception to the requirement of a valid search warrant, are allowed when "persons exercising police authority under the customs law . . . effect search and seizure . . . in the enforcement of customs laws." The Tariff and Customs Code provides the authority for such warrantless search, as this court ruled in *Papa, et al. v. Mago, et al.* x x x The ruling in *Papa* was echoed in

*Salvador v. People*, in that the state's policy to combat smuggling must not lose to the difficulties posed by the debate on whether the state has the duty to accord constitutional protection to dutiable articles on which duty has not been paid, as with a person's papers and/or effects. Hence, to be a valid customs search, the requirements are: (1) the person/s conducting the search was/were exercising police authority under customs law; (2) the search was for the enforcement of customs law; and (3) the place searched is not a dwelling place or house. Here, the facts reveal that the search was part of routine port security measures. The search was not conducted by persons authorized under customs law. It was also not motivated by the provisions of the Tariff and Customs Code or other customs laws. Although customs searches usually occur within ports or terminals, it is important that the search must be for the enforcement of customs laws.

**8. CRIMINAL LAW; COMMISSION ON ELECTIONS RESOLUTION NO. 7764 (COMELEC GUN BAN); ELEMENTS OF THE OFFENSE; ESTABLISHED IN CASE AT BAR.—** In violations of the Gun Ban, the accused must be "in possession of a firearm . . . outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority[.]" In *Abenes v. Court of Appeals*, this court enumerated the elements for a violation of the Gun Ban: "1) the person is bearing, carrying, or transporting firearms or other deadly weapons; 2) such possession occurs during the election period; and, 3) the weapon is carried in a public place." This court also ruled that under the Omnibus Election Code, the burden to show that he or she has a written authority to possess a firearm is on the accused. We find that the prosecution was able to establish all the requisites for violation of the Gun Ban. The firearms were found inside petitioner's bag. Petitioner did not present any valid authorization to carry the firearms outside his residence during the period designated by the Commission on Elections. He was carrying the firearms in the Cebu Domestic Port, which was a public place.

**9. ID.; ID.; ID.; PETITIONER FAILED TO PROVE THAT HIS POSSESSION OF THE ILLEGAL FIREARMS SEIZED FROM HIS BAG WAS "TEMPORARY, INCIDENTAL, CASUAL, OR HARMLESS POSSESSION."—** The disquisition

in *De Gracia* on the distinction between criminal intent and intent to possess, which is relevant to convictions for illegal possession of firearms, was reiterated in *Del Rosario v. People*. This court ruled that "[i]n the absence of *animus possidendi*, the possessor of a firearm incurs no criminal liability." In this case, petitioner failed to prove that his possession of the illegal firearms seized from his bag was "temporary, incidental, casual, or harmless possession[.]" As put by the trial court, petitioner's claim that anyone could have planted the firearms in his bag while it was unattended is flimsy. There are dire consequences in accepting this claim at face value, particularly that no one will be caught and convicted of illegal possession of firearms. Courts must also weigh the accused's claim against the totality of the evidence presented by the prosecution. This includes determination of: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) reasonableness of the situation creating the opportunity. Petitioner merely claims that someone must have planted the firearms when he left his bag with the porter. He did not identify who this person could have been and he did not state any motive for this person to plant the firearms in his possession, even if there was indeed an opportunity to plant the firearms. However, this court is mindful that, owing to the nature of his work, petitioner was a frequent traveler who is well-versed with port security measures. We cannot accept that an average reasonable person aware of travel security measures would leave his belongings with a stranger for a relatively long period of time. Also, records show that petitioner had only one (1) bag. There was no evidence to show that a robust young man like petitioner would have need of the porter's services. The defense did not identify nor present this porter with whom petitioner left his bag.

**10. ID.; ID.; ID.; THE TRIAL COURT PROPERLY DISMISSED CRIMINAL CASE NO. CBU-80084 FOR VIOLATION OF REPUBLIC ACT NO. 8294, OTHERWISE KNOWN AS ILLEGAL POSSESSION OF FIREARMS; SECTION 1 OF REPUBLIC ACT NO. 8294 IS EXPRESS IN ITS TERMS THAT A PERSON MAY NOT BE CONVICTED FOR ILLEGAL POSSESSION OF FIREARMS IF ANOTHER CRIME WAS COMMITTED.—** The trial court was correct when it dismissed Criminal Case No. CBU-80084 for violation

of Republic Act No. 8294, otherwise known as illegal possession of firearms. Section 1 of Republic Act No. 8294. *Agote v. Judge Lorenzo* already settled the question of whether there can be a "separate offense of illegal possession of firearms and ammunition if there is another crime committed[.]" In that case, the petitioner was charged with both illegal possession of firearms and violation of the Gun Ban under Commission on Elections Resolution No. 2826. This court acquitted petitioner in the case for illegal possession of firearms since he simultaneously violated the Gun Ban. This court also held that the unlicensed firearm need not be actually used in the course of committing the other crime for the application of Section 1 of Republic Act No. 8294. Similarly, *Madrigal v. People* applied the ruling in *Agote* and held that Section 1 of Republic Act No. 8294 is express in its terms that a person may not be convicted for illegal possession of firearms if another crime was committed.

**11. ID.; ID.; ID.; PENALTY IMPOSED BY TRIAL COURT; MODIFIED.—** We note that the trial court imposed the penalty of imprisonment for a period of one (1) year and to suffer disqualification to hold public office and deprivation of the right to suffrage. Under Section 264 of Batas Pambansa Blg. 881, persons found guilty of an election offense "shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation." The Indeterminate Sentence Law applies to offenses punished by both the Revised Penal Code and special laws. The penalty to be imposed is a matter of law that courts must follow. The trial court should have provided minimum and maximum terms for petitioner's penalty of imprisonment as required by the Indeterminate Sentence Law. Accordingly, we modify the penalty imposed by the trial court. Based on the facts, we deem it reasonable that petitioner be penalized with imprisonment of one (1) year as minimum to two (2) years as maximum.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**LEONEN, *J.*:**

Routine baggage inspections conducted by port authorities, although done without search warrants, are not unreasonable searches per se. Constitutional provisions protecting privacy should not be so literally understood so as to deny reasonable safeguards to ensure the safety of the traveling public.

For resolution is a Petition for Review on Certiorari[1] assailing the Decision[2] dated September 28, 2012 and the Resolution[3] dated August 23, 2013 of the Court of Appeals, Cebu City.[4] The Court of Appeals affirmed[5] the trial court's Judgment[6] finding petitioner Erwin Libo-on Dela Cruz (Dela Cruz) guilty beyond reasonable doubt of possessing unlicensed firearms under Commission on Elections Resolution No. 7764[7] in relation to

---

[1] *Rollo*, pp. 8-21.

[2] *Id*. at 56-63. The case was docketed as CA-GR CEB CR. No. 01606. The Decision was penned by Associate Justice Ramon Paul L. Hernando (Chair) and concurred in by Associate Justices Gabriel T. Ingles and Zenaida T. Galapate-Laguilles of the Special Twentieth Division, Court of Appeals Cebu.

[3] *Id*. at 68-69. The Resolution was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. Delos Santos (Chair) and Gabriel T. Ingles of the Special Former Special Twentieth Division, Court of Appeals Cebu.

[4] *Id*. at 17, Petition.

[5] *Id*. at 63, Court of Appeals Decision.

[6] *Id*. at 23-31, Regional Trial Court's Consolidated Judgment. The Consolidated Judgment was penned by Presiding Judge Estela Alma A. Singco of Branch 12 of the Regional Trial Court, Cebu City.

[7] Rules and Regulations on: (A) Bearing, Carrying or Transporting Firearms or Other Deadly Weapons; (B) Security Personnel or Bodyguards; (C) Bearing Arms by any Member of Security or Police Organization of Government Agencies and Other Similar Organization (D) Organization or Maintenance of Reaction Forces during the Election Period in connection with the May 14, 2007 National and Local Elections.

Section 261[8] of Batas Pambansa Blg. 881[9] during the 2007 election period.[10]

Dela Cruz was an on-the-job trainee of an inter-island vessel.[11] He frequently traveled, "coming back and forth taking a vessel."[12] At around 12:00 noon of May 11, 2007, Dela Cruz was at a pier of the Cebu Domestic Port to go home to Iloilo.[13] While buying a ticket, he allegedly left his bag on the floor with a porter.[14] It took him around 15 minutes to purchase a ticket.[15]

Dela Cruz then proceeded to the entrance of the terminal and placed his bag on the x-ray scanning machine for inspection.[16] The operator of the x-ray machine saw firearms inside Dela Cruz's bag.[17]

---

[8] Batas Blg. 881 (1985), Sec. 261(q) provides:

Section 261. Prohibited Acts. – The following shall be guilty of an election offense:

. . . . . . . . . .

(q) Carrying firearms outside residence or place of business. – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof. (Par. (l), *Id.*) This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

[9] Omnibus Election Code of The Philippines.

[10] *Rollo*, p. 30, Regional Trial Court's Consolidated Judgment.

[11] *Id.* at 12, Petition, and 27, Regional Trial Court's Consolidated Judgment; defense's version of the facts as summarized by the trial court.

[12] *Id.* at 27, Regional Trial Court's Consolidated Judgment.

[13] *Id.* at 25 and 27, Regional Trial Court's Consolidated Judgment, and 58, Court of Appeals Decision.

[14] *Id.* at 27.

[15] *Id.*

[16] *Id.*

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

Cutie Pie Flores (Flores) was the x-ray machine operator-on-duty on May 11, 2007.[18] She saw the impression of what appeared to be three (3) firearms inside Dela Cruz's bag.[19] Upon seeing the suspected firearms, she called the attention of port personnel Archie Igot (Igot) who was the baggage inspector then.[20]

Igot asked Dela Cruz whether he was the owner of the bag.[21] Dela Cruz answered Igot in the affirmative and consented to Igot's manual inspection of the bag.[22]

"Port Police Officer Adolfo Abregana [(Officer Abregana)] was on duty at the terminal of the Cebu Domestic Port in Pier 1-G when his attention was called by . . . Igot."[23] Igot told Officer Abregana that there were firearms in a bag owned by a certain person.[24] Igot then pointed to the person.[25] That person was later identified as Dela Cruz.[26]

Dela Cruz admitted that he was owner of the bag.[27] The bag was then inspected and the following items were found inside: three (3) revolvers; NBI clearance; seaman's book; other personal items; and four (4) live ammunitions placed inside the cylinder.[28] When asked whether he had the proper documents for the firearms, Dela Cruz answered in the negative.[29]

---

[18] *Id.* at 26.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 58, Court of Appeals Decision. In the trial court's Consolidated Judgment, the port personnel was named "Archie" Igot. The Court of Appeals Decision refers to the port personnel as "Arcie" Igot.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 58-59.

[29] *Id.* at 11, Petition, and 59, Court of Appeals Decision.

Dela Cruz was then arrested and informed of his violation of a crime punishable by law.[30] He was also informed of his constitutional rights.[31]

In the Information dated November 19, 2003, Dela Cruz was charged with violation of Republic Act No. 8294 for illegal possession of firearms:[32]

Criminal Case No. CBU -80084

That on or about the 11th day of May 2007, at about 12:45 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with the deliberate intent and without being authorized by law, did then and there possess and carry outside his residence one (1) Cal. 38 Simith [sic] & Wesson revolver without serial number; one (1) .22 Smith & Wesson Magnum revolver without serial number; one (1) North American Black Widow magnum revolver without serial number and four rounds of live ammunitions for cal. 38 without first securing the necessary license to possess and permit to carry from the proper authorities.

CONTRARY TO LAW.[33]

Subsequently, another Information was filed charging Dela Cruz with the violation of Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881:[34]

Criminal Case No. CBU 80085

That on or about the 11th day of May 2007, at about 12:45 in the afternoon, which is within the election period for the May 14, 2007 National and Local Elections, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there possess and carry outside his residence the following:

---

[30] *Id.* at 59, Court of Appeals Decision.

[31] *Id.*

[32] *Id.* at 57.

[33] *Id.*

[34] *Id.* at 58.

One (1) cal. .38 Simith [sic] & Wesson revolver without serial number; One (1) cal. .22 Smith & Wesson Magnum revolver without serial number; One (1) North American Black Widow magnum revolver without serial number and four (4) rounds of live ammunitions for cal. 38.

CONTRARY TO LAW.[35]

Dela Cruz entered a plea of not guilty to both charges during arraignment.[36]

After trial, Branch 12 of the Regional Trial Court, Cebu City found Dela Cruz guilty beyond reasonable doubt of violating the Gun Ban under Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881 in Criminal Case No. CBU 80085.[37] Dela Cruz was sentenced to suffer imprisonment of one (1) year with disqualification from holding public office and the right to suffrage.[38]

According to the trial court, the prosecution was able to prove beyond reasonable doubt that Dela Cruz committed illegal possession of firearms.[39] It proved the following elements: "(a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same."[40] The prosecution presented the firearms and live ammunitions found in Dela Cruz's possession.[41] It also presented three (3) prosecution witnesses who testified that the firearms were found inside Dela Cruz's bag.[42] The prosecution also presented a Certification that Dela Cruz did

---

[35] *Id*.

[36] *Id*. at 11, Petition, and 25, Regional Trial Court's Consolidated Judgment.

[37] *Id*. at 30, Regional Trial Court's Consolidated Judgment, and 59-60, Court of Appeals Decision.

[38] *Id*. at 30, Regional Trial Court's Consolidated Judgment, and 60, Court of Appeals Decision.

[39] *Id*. at 27-28, Regional Trial Court's Consolidated Judgment.

[40] *Id*.

[41] *Id*. at 28.

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

not file any application for license to possess a firearm, and he was not given authority to carry a firearm outside his residence.[43]

The trial court also held that the search conducted by the port authorities was reasonable and, thus, valid:[44]

> Given the circumstances obtaining here, the court finds the search conducted by the port authorities reasonable and, therefore, not violative of the accused's constitutional rights. Hence, when the search of the bag of the accused revealed the firearms and ammunitions, accused is deemed to have been caught *in flagrante delicto*, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The firearms and ammunitions obtained in the course of such valid search are thus admissible as evidence against [the] accused.[45]

The trial court did not give credence to Dela Cruz's claim that the firearms were "planted" inside his bag by the porter or anyone who could have accessed his bag while he was buying a ticket.[46] According to the trial court, Dela Cruz's argument was "easy to fabricate, but terribly difficult to disprove."[47] Dela Cruz also did not show improper motive on the part of the prosecution witnesses to discredit their testimonies.[48]

The trial court dismissed the case for violation of Republic Act No. 8294.[49] It held that "Republic Act No. 8294 penalizes simple illegal possession of firearms, provided that the person arrested committed 'no other crime.'"[50] Dela Cruz, who had been charged with illegal possession of firearms, was also charged

---

[43] *Id*. at 29.

[44] *Id*. at 28.

[45] *Id*.

[46] *Id*. at 29.

[47] *Id*.

[48] *Id*.

[49] *Id*. at 60, Court of Appeals Decision.

[50] *Id*. at 29, Regional Trial Court's Consolidated Judgment.

with violating the Gun Ban under Commission on Elections Resolution No. 7764.[51]

The dispositive portion of the trial court's Consolidated Judgment reads:

> **WHEREFORE,** the Court finds the accused guilty beyond reasonable doubt of violation of COMELEC Resolution No. 7764 in relation to Section 261 of BP Blg. 881 in Criminal Case No. CBU-80085, and hereby sentences him to suffer an imprisonment for a period of one (1) year, and to suffer disqualification to hold public office and deprivation of the right to suffrage.
>
> While Criminal Case No. CBU-80084 for Violation of RA 8294 is hereby **DISMISSED.** Accordingly, the cash bond posted by accused therein for his provisional liberty is hereby ordered cancelled and released to said accused.
>
> The subject firearms (Exhs. "H", "I" & "J"), and the live ammunitions (Exhs. "K to K-2"") shall, however, remain in custodia legis for proper disposition of the appropriate government agency.
>
> **SO ORDERED.**[52] (Emphasis in the original)

On appeal, the Court of Appeals affirmed the trial court's Judgment.[53] It held that the defense failed to show that the prosecution witnesses were moved by improper motive; thus, their testimonies are entitled to full faith and credit.[54] The acts of government authorities were found to be regular.[55]

The Court of Appeals did not find Dela Cruz's defense of denial meritorious.[56] "Denial as a defense has been viewed upon with disfavor by the courts due to the ease with which it can be concocted."[57] Dela Cruz did not present any evidence "to

---

[51] *Id*. at 30.

[52] *Id*. at 30-31.

[53] *Id*. at 63, Court of Appeals Decision.

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

[55] *Id*. at 61.

[56] *Id*. at 62.

[57] *Id*.

show that he had authority to carry outside of residence firearms and ammunition during the period of effectivity of the Gun Ban [during] election time."[58] The prosecution was able to prove Dela Cruz's guilt beyond reasonable doubt.

The dispositive portion of the assailed Decision provides:

**WHEREFORE,** premises considered, the appeal is hereby **DENIED.** The assailed January 27, 2010 Consolidated Judgment of the Regional Trial Court (RTC), Branch 12 of Cebu City in Criminal Case CBU-59434 is hereby **AFFIRMED.** Costs on accused-appellant.

**SO ORDERED**.[59] (Emphasis in the original)

Dela Cruz filed a Motion for Reconsideration,[60] which was denied by the Court of Appeals in its Resolution dated August 23, 2013.[61]

Dela Cruz filed this Petition on November 4, 2013.[62] In the Resolution[63] dated December 9, 2013, this court required respondent, through the Office of the Solicitor General, to submit its Comment on the Petition. Respondent submitted its Comment[64] on March 6, 2014, which this court noted in the Resolution[65] dated March 19, 2014.

Dela Cruz claims that he was an on-the-job trainee for an inter-island vessel.[66] He was "well[-]acquainted with [the] inspection scheme [at the] ports."[67] He would not have risked

---

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

[59] *Id*. at 63.

[60] *Id*. at 64-67.

[61] *Id*. at 69, Court of Appeals Resolution.

[62] *Id*. at 8, Petition.

[63] *Id*. at 72.

[64] *Id*. at 83-95.

[65] *Id*. at 97.

[66] *Id*. at 14, Petition.

[67] *Id*.

placing prohibited items such as unlicensed firearms inside his luggage knowing fully the consequences of such an action.[68]

According to Dela Cruz, when he arrived at the port on May 11, 2007, he left his luggage with a porter to buy a ticket.[69] "A considerable time of fifteen minutes went by before he could secure the ticket while his luggage was left sitting on the floor with only the porter standing beside it."[70] He claims that someone must have placed the unlicensed firearms inside his bag during the period he was away from it.[71] He was surprised when his attention was called by the x-ray machine operator after the firearms were detected.[72]

Considering the circumstances, Dela Cruz argues that there was no voluntary waiver against warrantless search:[73]

> In petitioner's case, it may well be said that, with the circumstances attending the search of his luggage, he had no actual intention to relinquish his right against warrantless searches. He knew in all honest belief that when his luggage would pass through the routine x-ray examination, nothing incriminating would be recovered. It was out of that innocent confidence that he allowed the examination of his luggage. . . . ***[H]e believed that no incriminating evidence w[ould] be found***. He knew he did not place those items. But what is strikingly unique about his situation is that a considerable time interval lapsed, creating an opportunity for someone else to place inside his luggage those incriminating items.[74] (Emphasis in the original)

Respondent argues that there was a valid waiver of Dela Cruz's right to unreasonable search and seizure, thus warranting his conviction.[75] Dela Cruz was "caught *in flagrante delicto*

---

[68] *Id*.

[69] *Id*. at 15.

[70] *Id*.

[71] *Id*.

[72] *Id*.

[73] *Id*. at 15-16.

[74] *Id*. at 16.

[75] *Id*. at 88 and 90-91, Comment.

carrying three (3) revolvers and four (4) live ammunitions when his bag went through the x-ray machine in the Cebu Domestic Port on May 11, 2007, well within the election period."[76] The firearms were seized during a routine baggage x-ray at the port of Cebu, a common seaport security procedure.[77]

According to respondent, this case is similar to valid warrantless searches and seizures conducted by airport personnel pursuant to routine airport security procedures.[78]

Records are also clear that Dela Cruz voluntarily waived his right to unreasonable searches and seizure.[79] The trial court found that Dela Cruz voluntarily gave his consent to the search.[80]

Dela Cruz's claim that his bag was switched is also baseless.[81] The witnesses categorically testified that Dela Cruz was "in possession of the bag before it went through the x-ray machine, and he was also in possession of the same bag that contained the firearms when he was apprehended."[82]

Dela Cruz raised the lone issue of "whether the Court of Appeals gravely erred in finding [him] guilty beyond reasonable doubt of the crime charged despite the failure of the prosecution to establish his guilt beyond reasonable doubt[.]"[83]

The issues for resolution in this case are:

First, whether petitioner Erwin Libo-on Dela Cruz was in possession of the illegal firearms within the meaning of the

---

[76] *Id.* at 88.

[77] *Id.*

[78] *Id.* at 89-90.

[79] *Id.* at 90.

[80] *Id.* at 92, *citing* the Regional Trial Court's Consolidated Judgment, p. 6.

[81] *Id.* at 92.

[82] *Id.* at 92-93.

[83] *Id.* at 14, Petition.

Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881;

Second, whether petitioner waived his right against unreasonable searches and seizures; and

Lastly, assuming that there was no waiver, whether there was a valid search and seizure in this case.

We deny the petition.

I

The present criminal case was brought to this court under Rule 45 of the Rules of Court. The penalty imposed on petitioner by the trial court is material in determining the mode of appeal to this court. A petition for review on certiorari under Rule 45 must be differentiated from appeals under Rule 124, Section 13[84] involving cases where the lower court imposed on the accused

---

[84] RULES OF COURT, Rule 124, Sec. 13, as amended by A.M. No. 00-5-03-SC dated September 28, 2004, provides:

> Sec. 13. Certification or appeal of case to the Supreme Court.— (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.
>
> (b) Where the judgment also imposes a lesser penalty for offenses' committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to the Supreme Court.
>
> (c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.
>
> *See People v. Rocha*, 558 Phil. 521, 530–535 (2007) [Per *J.* Chico-Nazario, Third Division], for a discussion on the difference between appeal for cases involving imposition of life imprisonment and *reclusion perpetua*, and automatic review for cases involving imposition of death penalty. See also *People v. Mateo*, 477 Phil. 752, 768–773 (2004) [Per *J.* Vitug, *En Banc*].

the penalty of *reclusion perpetua*, life imprisonment, or, previously, death.[85]

In *Mercado v. People*:[86]

> Where the Court of Appeals finds that the imposable penalty in a criminal case brought to it on appeal is at least *reclusion perpetua*, death or life imprisonment, then it should impose such penalty, refrain from entering judgment thereon, certify the case and elevate the entire records to this Court for review. *This will obviate the unnecessary, pointless and time-wasting shuttling of criminal cases between this Court and the Court of Appeals*, for by then this Court will acquire jurisdiction over the case from the very inception and can, without bothering the Court of Appeals which has fully completed the exercise of its jurisdiction, do justice in the case.
>
> *On the other hand, where the Court of Appeals imposes a penalty less than reclusion perpetua, a review of the case may be had only by petition for review on certiorari under Rule 45 where only errors or questions of law may be raised*.[87] (Emphasis supplied, citations omitted)

It is settled that in petitions for review on certiorari, only questions of law are reviewed by this court.[88] The rule that only questions of law may be raised in a petition for review under Rule 45 is based on sound and practical policy

---

[85] *See* Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"

[86] 441 Phil. 216 (2002) [Per *J.* Bellosillo, Second Division]. The case was decided in 2002 before the amendment of the Rules in A.M. No. 00-5-3-SC dated September 28, 2004.

[87] *Id.* at 222–223.

[88] RULES OF COURT, Rule 45, Sec. 1 provides:

> SECTION 1. Filing of petition with Supreme Court.— A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, 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 shall raise only questions of law which must be distinctly set forth.

*See Tan v. People*, 604 Phil. 68, 78 (2009) [Per *J.* Chico-Nazario, Third Division].

considerations stemming from the differing natures of a question of law and a question of fact:

> A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[89]

Concomitantly, factual findings of the lower courts as affirmed by the Court of Appeals are binding on this court.[90]

In contrast, an appeal in a criminal case "throws the whole case open for review[.]"[91] The underlying principle is that errors in an appealed judgment, even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case.[92] Nevertheless, "the right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided for by law[.]"[93]

---

[89] *Ruiz v. People*, 512 Phil. 127, 135 (2005) [Per *J.* Callejo, Sr., Second Division], *citing Republic v. Sandiganbayan*, 425 Phil. 752, 765-766 (2002) [Per *C.J.* Davide, Jr., *En Banc*].

[90] *See People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 844-845 [Per *J.* Sereno (now *C.J.*), Second Division].

[91] *People v. Galigao*, 443 Phil. 246, 261 (2003) [Per *J.* Ynares-Santiago, *En Banc*], *citing People v. Taño*, 387 Phil. 465, 478 (2000) [Per *J.* Panganiban, *En Banc*] and *People v. Castillo*, 382 Phil. 499, 506 (2000) [Per *J.* Puno, *En Banc*].

[92] *People v. Galigao*, 443 Phil. 246, 261 (2003) [Per *J.* Ynares-Santiago, *En Banc*], *citing People v. Pirame*, 384 Phil. 286, 300 (2000) [Per *J.* Quisumbing, Second Division].

[93] *People v. Judge Laguio, Jr.*, 547 Phil. 296, 309 (2007) [Per *J.* Garcia, First Division].

II

Petitioner argues that the firearms found in his bag were not his. Thus, he could not be liable for possessing the contraband. Key to the resolution of this case is whether petitioner possessed firearms without the necessary authorization from the Commission on Elections. Petitioner was charged under special laws: Republic Act No. 8294 and Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881.

The law applicable is Section 2(a) of Commission on Elections Resolution No. 7764, which provides:

SECTION 2. Prohibitions. During the election period from January 14, 2007 it shall be unlawful for:

a. Any person, including those possessing a permit to carry firearms outside of residence or place of business, to bear, carry or transport firearms or other deadly weapons in public places including any building, street, park, private vehicle or public conveyance. For the purpose firearm includes airgun, while deadly weapons include hand grenades or other explosives, except pyrotechnics[.]

Section 261(q) of Batas Pambansa Blg. 881 states:

Section 261. Prohibited Acts. – The following shall be guilty of an election offense:

. . . . . .

(q) Carrying firearms outside residence or place of business. – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof. (Par. (l), *Id.*)

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

For a full understanding of the nature of the constitutional rights involved, we will examine three (3) points of alleged intrusion into the right to privacy of petitioner: first, when petitioner gave his bag for x-ray scanning to port authorities; second, when the baggage inspector opened petitioner's bag and called the Port Authority Police; and third, when the police officer opened the bag to search, retrieve, and seize the firearms and ammunition.

III

The first point of intrusion occurred when petitioner presented his bag for inspection to port personnel — the x-ray machine operator and baggage inspector manning the x-ray machine station.[94] With regard to searches and seizures, the standard imposed on private persons is different from that imposed on state agents or authorized government authorities.

In *People v. Marti*,[95] the private forwarding and shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages.[96] The representative from the company found dried marijuana leaves in the packages.[97] He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination.[98] Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs.[99] Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act.[100]

---

[94] *Rollo*, p. 28, Regional Trial Court's Consolidated Judgment.

[95] 271 Phil. 51 (1991) [Per *J.* Bidin, Third Division].

[96] *Id.* at 54-55.

[97] *Id.* at 55.

[98] *Id.*

[99] *Id.*

[100] *Id.* at 56.

This court held that there was no unreasonable search or seizure.[101] The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies.[102] The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals:[103]

> If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.[104]

Hence, by virtue of *Marti*, items seized pursuant to a reasonable search conducted by private persons are not covered by the exclusionary rule.[105]

---

[101] *Id*. at 60.

[102] *Id*.

[103] *Id*. at 61.

[104] *Id*. at 62.

[105] *Id*. at 58. *See Stonehill, et al. v. Diokno, et al.*, 126 Phil. 738 (1967) [Per *C.J.* Concepcion, *En Banc*]. In *People v. Alicando*, 321 Phil. 656, 690-691 (1995) [Per *J.* Puno, *En Banc*], this court explained the doctrine of fruit of the poisonous tree as adopted in this jurisdiction: "We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the 'fruit of the poisonous tree,' a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States.* According to this rule, once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the 'fruit of the poisonous tree' is the indirect result of the same illegal act. The 'fruit of the poisonous tree' is at least once removed from the illegally seized evidence, but it is equally

To determine whether the intrusion by the port personnel in this case was committed by private or public persons, we revisit the history and organizational structure of the Philippine Ports Authority.

Port security measures are consistent with the country's aim to develop transportation and trade in conjunction with national and economic growth. In 1974, the Philippine Ports Authority was created for the reorganization of port administration and operation functions.[106] The Philippine Ports Authority's Charter was later revised through Presidential Decree No. 857. The Revised Charter provided that the Authority may:

> after consultation with relevant Government agencies, make rules or regulations for the planning, development, construction, maintenance, control, supervision and management of any Port or Port District and the services to be provided therein, and for the maintenance of good order therein, and generally for carrying out the process of this Decree.[107]

The Philippine Ports Authority was subsequently given police authority through Executive Order No. 513,[108] which provides:

---

inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. We applied this exclusionary rule in the recent case of *People vs. Salanga, et al.,* a *ponencia* of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that 'the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called fruit of the poisonous tree.'"

[106] See Pres. Decree No. 505 (1974), entitled Providing for the Reorganization of Port Administration and Operation Functions in the Country, Creating the Philippine Port Authority, Paving the Way for the Establishment of Individual, Autonomous Port/Industrial Zone Authorities in the Different Port Districts, and for Other Purposes.

[107] Pres. Decree No. 857 (1974), Art. VIII, Sec. 26(a).

[108] Exec. Order No. 513 (1978) is entitled Reorganizing the Philippine Ports Authority.

Sec. 2. Section 6 is hereby amended by adding a new paragraph to read as follows:

> *Section 6-c. Police Authority – The Authority shall have such police authority within the ports administered by it as may be necessary to carry out its powers and functions and attain its purposes and objectives*, without prejudice to the exercise of the functions of the Bureau of Customs and other law enforcement bodies within the area. Such police authority shall include the following:
>
> a) To provide security to cargoes, port equipment, structure, facilities, personnel and documents: Provided, however, That in ports of entry, physical security to import and export cargoes shall be exercised jointly with the Bureau of Customs;
>
> *b) To regulate the entry to, exit from, and movement within the port, of persons and vehicles, as well as movement within the port of watercraft;*
>
> c) To maintain peace and order inside the port, in coordination with local police authorities;
>
> d) To supervise private security agencies operating within the port area; and
>
> e) To enforce rules and regulations promulgated by the Authority pursuant to law. (Emphasis supplied)

In 1992, the Cebu Port Authority was created to specifically administer all ports located in the Province of Cebu.[109] The Cebu Port Authority is a "public-benefit corporation . . . under the supervision of the Department of Transportation and Communications for purposes of policy coordination."[110] Control of the ports was transferred to the Cebu Port Authority on January 1, 1996, when its operations officially began.[111]

---

[109] *See* Rep. Act No. 7621 (1992), entitled An Act Creating the Cebu Port Authority Defining its Powers and Functions, Providing Appropriation therefor, and for Other Purposes.

[110] Rep. Act No. 7621 (1992), Sec. 3.

[111] See Cebu Port Authority, Corporate Profile, History <http://www.cpa.gov.ph/index.php?option=com_content&view=article&id= 142&mId=110&mItemId=111> (visited September 1, 2015).

In 2004, the Office for Transportation Security was designated as the "single authority responsible for the security of the transportation systems [in] the country[.]"[112] Its powers and functions included providing security measures for all transportation systems in the country:

> b. Exercise operational control and supervision over all units of law enforcement agencies and agency personnel providing security services in the transportation systems, except for motor vehicles in land transportation, jointly with the heads of the bureaus or agencies to which the units or personnel organically belong or are assigned;
>
> *c. Exercise responsibility for transportation security operations including, but not limited to, security screening of passengers, baggage and cargoes, and hiring, retention, training and testing of security screening personnel;*
>
> *d. In coordination with the appropriate agencies and/or instrumentalities of the government, formulate, develop, promulgate and implement comprehensive security plans, policies, measures, strategies and programs to ably and decisively deal with any threat to the security of transportation systems, and continually review, assess and upgrade such security plans, policies, measures, strategies and programs, to improve and enhance transportation security and ensure the adequacy of these security measures;*
>
> e. Examine and audit the performance of transportation security personnel, equipment and facilities, and, thereafter, establish, on a continuing basis, performance standards for such personnel, equipment and facilities, including for the training of personnel;
>
> f. Prepare a security manual/master plan or programme which shall prescribe the rules and regulations for the efficient and safe operation of all transportation systems, including standards for security screening procedures, prior screening or profiling of individuals for the issuance of security access passes, and determination of levels of security clearances for personnel of

---

[112] *See* Exec. Order No. 311 (2004), entitled Designating the Office for Transportation Security as the Single Authority Responsible for the Security of the Transportation Systems of the Country, Expanding its Powers and Functions and for Other Purposes. *See also* Exec. Order No. 277 (2004).

> the OTS, the DOTC and its attached agencies, and other agencies of the government;
>
> g. Prescribe security and safety standards for all transportation systems in accordance with existing laws, rules, regulations and international conventions;
>
> h. Subject to the approval of the Secretary of the DOTC, issue Transportation Security Regulations/Rules and amend, rescind or revise such regulations or rules as may be necessary for the security of the transportation systems of the country[.][113] (Emphasis supplied)

The Cebu Port Authority has adopted security measures imposed by the Office for Transportation Security, including the National Security Programme for Sea Transport and Maritime Infrastructure.[114]

The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. While there is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function.

In *People v. Malngan*,[115] barangay tanod and the Barangay Chairman were deemed as law enforcement officers for purposes of applying Article III of the Constitution.[116] In *People v. Lauga*,[117] this court held that a "bantay bayan," in relation to

---

[113] Exec. Order No. 311 (2004), Sec. 2.

[114] See Cebu Port Authority Admin. Order No. 04 (2008) <http://www.cpa.gov.ph/external/pdf/all_admin_order/2008/AO_04-2008.pdf> (visited September 1, 2015).

[115] 534 Phil. 404 (2006) [Per *J.* Chico-Nazario, *En Banc*]. This case applied the ruling in *Marti* on the inapplicability of the Bill of Rights against private individuals. However, it found that *barangay tanod* and the *Barangay* Chairman are law enforcement officers for purposes of applying Article III, Section 12(1) and (3) of the Constitution.

[116] *Id.* at 439.

[117] 629 Phil. 522 (2010) [Per *J.* Perez, Second Division].

the authority to conduct a custodial investigation under Article III, Section 12[118] of the Constitution, "has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]"[119]

Thus, with port security personnel's functions having the color of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case. Nevertheless, searches pursuant to port security measures are not unreasonable per se. The security measures of x-ray scanning and inspection in domestic ports are akin to routine security procedures in airports.

In *People v. Suzuki*,[120] the accused "entered the pre-departure area of the Bacolod Airport Terminal."[121] He was "bound for Manila via flight No. 132 of the Philippine Airlines and was carrying a small traveling bag and a box marked 'Bongbong's piaya.'"[122] The accused "proceeded to the 'walk-through metal detector,' a machine which produces a red light and an alarm

---

[118] CONST., Art. III, Sec. 12 provides:

SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

[119] *People v. Lauga*, 629 Phil. 522, 531 (2010) [Per *J.* Perez, Second Division].

[120] G.R. No. 120670, October 23, 2003, 414 SCRA 43 [Per *J.* Sandoval-Gutierrez, *En Banc*].

[121] *Id.* at 45.

[122] *Id.*

once it detects the presence of metallic substance or object."[123] "Thereupon, the red light switched on and the alarm sounded, signifying the presence of metallic substance either in his person or in the box he was carrying."[124] When the accused was asked to open the content of the box, he answered "open, open."[125] Several packs of dried marijuana fruiting tops were then found inside the box.[126] Suzuki argued that the box was only given to him as "pasalubong" by a certain Pinky, whom he had sexual relations with the night before.[127] He did not know the contents of the box.[128]

This court in *Suzuki* found that the search conducted on the accused was a valid exception to the prohibition against warrantless searches as it was pursuant to a routine airport security procedure:[129]

> It is axiomatic that a reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case. Given the circumstances obtaining here, we find the search conducted by the airport authorities reasonable and, therefore, not violative of his constitutional rights. Hence, when the search of the box of *piaya* revealed several marijuana fruiting tops, appellant is deemed to have been caught *in flagrante delicto*, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The packs of marijuana obtained in the course of such valid search are thus admissible as evidence against appellant.[130] (Citations omitted)

The reason behind it is that there is a reasonable reduced expectation of privacy when coming into airports or ports of travel:

---

[123] *Id.* at 46.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.* at 47.

[128] *Id.*

[129] *Id.* at 53.

[130] *Id.* at 56-57.

*Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures.* With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. *Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are.* There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. *Indeed, travelers are often notified through airport public address systems, signs and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.*[131] (Emphasis supplied, citations omitted)

This rationale was reiterated more recently in *Sales v. People*.[132] This court in *Sales* upheld the validity of the search conducted as part of the routine security check at the old Manila Domestic Airport—now Terminal 1 of the Ninoy Aquino International Airport.[133]

Port authorities were acting within their duties and functions when it used x-ray scanning machines for inspection of passengers' bags.[134] When the results of the x-ray scan revealed

---

[131] *Id.* at 53-54.

[132] G.R. No. 191023, February 6, 2013, 690 SCRA 141 [Per *J.* Villarama, Jr., First Division].

[133] *Id.* at 145 and 152.

[134] Police authority has been delegated to different government agencies and instrumentalities through law. *See* TARIFF CODE, Sec. 2203; Pres. Decree No. 1716-A (1980), entitled Further Amending Presidential Decree No. 66 dated November 20, 1972, Creating the Export Processing Zone Authority, Sec. 7; and Exec. Order No. 903 (1983), entitled Providing for a Revision of

the existence of firearms in the bag, the port authorities had probable cause to conduct a search of petitioner's bag. Notably, petitioner did not contest the results of the x-ray scan.

IV

Was the search rendered unreasonable at the second point of intrusion—when the baggage inspector opened petitioner's bag and called the attention of the port police officer?

We rule in the negative.

The port personnel's actions proceed from the authority and policy to ensure the safety of travelers and vehicles within the port. At this point, petitioner already submitted himself and his belongings to inspection by placing his bag in the x-ray scanning machine.

The presentation of petitioner's bag for x-ray scanning was voluntary. Petitioner had the choice of whether to present the bag or not. He had the option not to travel if he did not want his bag scanned or inspected. X-ray machine scanning and actual inspection upon showing of probable cause that a crime is being or has been committed are part of reasonable security regulations to safeguard the passengers passing through ports or terminals. Probable cause is:

> reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense

---

Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport. *See* also *Salvador v. People*, 502 Phil. 60 (2005) [Per *J.* Sandoval-Gutierrez, Third Division]; *Pacis v. Pamaran*, 155 Phil. 17 (1974) [Per *J.* Fernando, Second Division]; *Manikad, et al. v. Tanodbayan, et al.*, 212 Phil. 669 (1984) [Per *J.* Escolin, *En Banc*]; and *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006) [Per *J.* Carpio, *En Banc*].

or subject to seizure and destruction by law are in the place to be searched.[135]

It is not too burdensome to be considered as an affront to an ordinary person's right to travel if weighed against the safety of all passengers and the security in the port facility.

As one philosopher said, the balance between authority and an individual's liberty may be confined within the harm that the individual may cause others. John Stuart Mill's "harm principle" provides:

> [T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.[136]

Any perceived curtailment of liberty due to the presentation of person and effects for port security measures is a permissible intrusion to privacy when measured against the possible harm to society caused by lawless persons.

---

[135] *People v. Mariacos*, 635 Phil. 315, 329 (2010) [Per *J*. Nachura, Second Division], *citing People v. Aruta*, 351 Phil. 868, 880 (1998) [Per *J*. Romero, Third Division], *citing* in turn *People v. Encinada*, 345 Phil. 301, 317 (1997) [Per *J.* Panganiban, Third Division].

[136] John Stuart Mill, *On Liberty* <https://www.gutenberg.org/files/34901/34901-h/34901-h.htm> (visited September 1, 2015).

V

A third point of intrusion to petitioner's right to privacy occurred during petitioner's submission to port security measures. This court should determine whether the requirements for a valid waiver against unreasonable searches and seizures were met.

After detection of the firearms through the x-ray scanning machine and inspection by the baggage inspector, Officer Abregana was called to inspect petitioner's bag.

The Constitution safeguards a person's right against unreasonable searches and seizures.[137] A warrantless search is presumed to be unreasonable.[138] However, this court lays down the exceptions where warrantless searches are deemed legitimate: (1) warrantless search incidental to a lawful arrest; (2) seizure in "plain view"; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[139]

In *Caballes v. Court of Appeals*:[140]

In case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the

---

[137] Const., Art. III, Sec. 2 provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[138] *See People v. Aruta*, 351 Phil. 868 (1998) [Per *J.* Romero, Third Division].

[139] *See People v. Cogaed*, G.R. No. 200334, July 30, 2014, 731 SCRA 427, 440-441 [Per *J.* Leonen, Third Division]. See also *Villanueva v. People*, G.R. No. 199042, November 17, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/199042.pdf> 5 [Per *C.J.* Sereno, First Division].

[140] 424 Phil. 263 (2002) [Per *J.* Puno, First Division].

existence of such right; and (3) the said person had an actual intention to relinquish the right.[141]

Petitioner anchors his case on the claim that he did not validly consent to the search conducted by the port authorities. He argues that he did not have an actual intention to relinquish his right against a warrantless search.

In cases involving the waiver of the right against unreasonable searches and seizures, events must be weighed in its entirety. The trial court's findings show that petitioner presented his bag for scanning in the x-ray machine.[142] When his bag went through the x-ray machine and the firearms were detected, he voluntarily submitted his bag for inspection to the port authorities:

Prosecutor Narido:

Q. What did he tell you?

A. I asked him if I can check his bag?

Q. What was his response?

A. He consented and cooperated. I checked the bag.[143]

It was after the port personnel's inspection that Officer Abregana's attention was called and the bag was inspected anew with petitioner's consent.[144]

"[A]ppellate courts accord the highest respect to the assessment of witnesses' credibility by the trial court, because the latter was in a better position to observe their demeanor and deportment on the witness stand."[145] We do not find anything erroneous as to the findings of fact of both the trial court and the Court of Appeals.

---

[141] *Id*. at 289. *See People v. Figueroa*, 390 Phil. 561 (2000) [Per *C.J.* Davide, First Division].

[142] *Rollo*, pp. 26-28, Regional Trial Court's Consolidated Judgment.

[143] *Id*. at 28.

[144] *Id*. at 25-27.

[145] *People v. Lacerna*, 344 Phil. 100, 124 (1997) [Per *J.* Panganiban, Third Division].

There was probable cause that petitioner was committing a crime leading to the search of his personal effects. As the trial court found:

> Given the circumstances obtaining here, the court finds the search conducted by the port authorities reasonable and, therefore, not violative of the accused's constitutional rights. Hence, when the search of the bag of the accused revealed the firearms and ammunitions, accused is deemed to have been caught in flagrante delicto, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The firearms and ammunitions obtained in the course of such valid search are thus admissible as evidence against [the] accused.[146]

Similar to the accused in *People v. Kagui Malasugui*[147] and *People v. Omaweng*[148] who permitted authorities to search their persons and premises without a warrant, petitioner is now precluded from claiming an invalid warrantless search when he voluntarily submitted to the search on his person. In addition, petitioner's consent to the search at the domestic port was not given under intimidating or coercive circumstances.[149]

This case should be differentiated from that of *Aniag, Jr. v. Commission on Elections*,[150] which involved the search of a moving vehicle at a checkpoint.[151] In that case, there was no implied acquiescence to the search since the checkpoint set up by the police authorities was conducted without proper consultation, and it left motorists without any choice except to subject themselves to the checkpoint:

---

[146] *Rollo*, p. 28, Regional Trial Court's Consolidated Judgment.

[147] 63 Phil. 221 (1936) [Per *J.* Diaz, *En Banc*], citing I THOMAS COOLEY, CONSTITUTIONAL LIMITATIONS 631 (8th ed.).

[148] G.R. No. 99050, September 2, 1992, 213 SCRA 462, 470-471 [Per *J.* Davide, Jr., Third Division].

[149] See *Caballes v. Court of Appeals*, 424 Phil. 263, 289 (2002) [Per *J.* Puno, First Division].

[150] G.R. No. 104961, October 7, 1994, 237 SCRA 424 [Per *J.* Bellosillo, *En Banc*].

[151] *Id.* at 429.

It may be argued that the seeming acquiescence of Arellano to the search constitutes an implied waiver of petitioner's right to question the reasonableness of the search of the vehicle and the seizure of the firearms.

While Resolution No. 2327 authorized the setting up of checkpoints, it however stressed that "guidelines shall be made to ensure that no infringement of civil and political rights results from the implementation of this authority," and that "the places and manner of setting up of checkpoints shall be determined in consultation with the Committee on Firearms Ban and Security Personnel created under Sec. 5, Resolution No. 2323." The facts show that PNP installed the checkpoint at about five o'clock in the afternoon of 13 January 1992. The search was made soon thereafter, or thirty minutes later. It was not shown that news of impending checkpoints without necessarily giving their locations, and the reason for the same have been announced in the media to forewarn the citizens. Nor did the informal checkpoint that afternoon carry signs informing the public of the purpose of its operation. *As a result, motorists passing that place did not have any inkling whatsoever about the reason behind the instant exercise. With the authorities in control to stop and search passing vehicles, the motorists did not have any choice but to submit to the PNP's scrutiny. Otherwise, any attempt to turnabout albeit innocent would raise suspicion and provide probable cause for the police to arrest the motorist and to conduct an extensive search of his vehicle*.

In the case of petitioner, only his driver was at the car at that time it was stopped for inspection. As conceded by COMELEC, driver Arellano did not know the purpose of the checkpoint. In the face of fourteen (14) armed policemen conducting the operation, driver Arellano being alone and a mere employee of petitioner could not have marshalled the strength and the courage to protest against the extensive search conducted in the vehicle. In such scenario, the "implied acquiescence," if there was any, could not be more than a mere passive conformity on Arellano's part to the search, and "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty.[152] (Emphasis supplied, citations omitted)

We also cannot subscribe to petitioner's argument that there was no valid consent to the search because his consent was premised

---

[152] *Id*. at 436-437.

on his belief that there were no prohibited items in his bag. The defendant's belief that no incriminating evidence would be found does not automatically negate valid consent to the search when incriminating items are found. His or her belief must be measured against the totality of the circumstances.[153] Again, petitioner voluntarily submitted himself to port security measures and, as he claimed during trial, he was familiar with the security measures since he had been traveling back and forth through the sea port.

Consequently, we find respondent's argument that the present petition falls under a valid consented search and during routine port security procedures meritorious. The search conducted on petitioner's bag is valid.

VI

The consented search conducted on petitioner's bag is different from a customs search.

Customs searches, as exception to the requirement of a valid search warrant, are allowed when "persons exercising police authority under the customs law . . . effect search and seizure . . . in the enforcement of customs laws."[154] The Tariff and Customs Code provides the authority for such warrantless search, as this court ruled in *Papa, et al. v. Mago, et al.*:[155]

> The Code authorizes persons having police authority under Section 2203 of the Tariff and Customs Code to enter, pass through or search any land, inclosure, warehouse, store or building, not being a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board, or stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced

---

[153] See *Caballes v. Court of Appeals,* 424 Phil. 263, 286 (2002) [Per *J.* Puno, First Division].

[154] *Papa, et al. v. Mago, et al.*, 130 Phil. 886, 902 (1968) [Per *J.* Zaldivar, *En Banc*].

[155] 130 Phil. 886 (1968) [Per *J.* Zaldivar, *En Banc*].

into the Philippines contrary to law, without mentioning the need of a search warrant in said cases.[156] (Citation omitted)

The ruling in *Papa* was echoed in *Salvador v. People*,[157] in that the state's policy to combat smuggling must not lose to the difficulties posed by the debate on whether the state has the duty to accord constitutional protection to dutiable articles on which duty has not been paid, as with a person's papers and/or effects.[158]

Hence, to be a valid customs search, the requirements are: (1) the person/s conducting the search was/were exercising police authority under customs law; (2) the search was for the enforcement of customs law; and (3) the place searched is not a dwelling place or house. Here, the facts reveal that the search was part of routine port security measures. The search was not conducted by persons authorized under customs law. It was also not motivated by the provisions of the Tariff and Customs Code or other customs laws. Although customs searches usually occur within ports or terminals, it is important that the search must be for the enforcement of customs laws.

VII

In violations of the Gun Ban, the accused must be "in possession of a firearm . . . outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority[.]"[159]

In *Abenes v. Court of Appeals*,[160] this court enumerated the elements for a violation of the Gun Ban: "1) the person is bearing,

---

[156] *Id.* at 901-902.

[157] 502 Phil. 60 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[158] *Id.* at 72.

[159] See *Escalante v. People*, G.R. No. 192727, January 9, 2013, 688 SCRA 362, 373 [Per *J.* Reyes, First Division].

[160] 544 Phil. 614 (2007) [Per *J.* Austria-Martinez, Third Division]. In this case, the accused was convicted of violating the Gun Ban but was acquitted of violating Presidential Decree No. 1866 (*Id.* at 634). This court held: "While the prosecution was able to establish the fact that the subject

carrying, or transporting firearms or other deadly weapons; 2) such possession occurs during the election period; and, 3) the weapon is carried in a public place."[161] This court also ruled that under the Omnibus Election Code, the burden to show that he or she has a written authority to possess a firearm is on the accused.[162]

We find that the prosecution was able to establish all the requisites for violation of the Gun Ban. The firearms were found inside petitioner's bag. Petitioner did not present any valid authorization to carry the firearms outside his residence during the period designated by the Commission on Elections. He was carrying the firearms in the Cebu Domestic Port, which was a public place.

However, petitioner raised the following circumstances in his defense: (1) that he was a frequent traveler and was, thus, knowledgeable about the security measures at the terminal; (2) that he left his bag with a porter for a certain amount of time; and (3) that he voluntarily put his bag on the x-ray machine for voluntary inspection. All these circumstances were left uncontested by the prosecution.

This court is now asked to determine whether these circumstances are sufficient to raise reasonable doubt on petitioner's guilt.

When petitioner claimed that someone planted the illegal firearms in his bag, the burden of evidence to prove this allegation shifted to him. The shift in the burden of evidence does not

---

firearm was seized by the police from the possession of the petitioner, without the latter being able to present any license or permit to possess the same, such fact alone is not conclusive proof that he was not lawfully authorized to carry such firearm. In other words, such fact does not relieve the prosecution from its duty to establish the lack of a license or permit to carry the firearm by clear and convincing evidence, like a certification from the government agency concerned" (*Id.* at 631).

[161] *Id.* at 633. *Abenes* involved the Commission on Elections' imposed Gun Ban through Rep. Act No. 7166 (1991), Sec. 32, which is substantially the same with COMELEC Resolution No. 7764 (2006), Sec. 2, in relation to Batas Blg. 881 (1985), Sec. 261.

[162] *Id.* at 632.

equate to the reversal of the presumption of innocence. In *People v. Villanueva*,[163] this court discussed the difference between burden of proof and burden of evidence, and when the burden of evidence shifts to the accused:

> Indeed, in criminal cases, the prosecution bears the onus to prove beyond reasonable doubt not only the commission of the crime but likewise to establish, with the same quantum of proof, the identity of the person or persons responsible therefor. *This burden of proof does not shift to the defense but remains in the prosecution throughout the trial. However, when the prosecution has succeeded in discharging the burden of proof* by presenting evidence sufficient to convince the court of the truth of the allegations in the information or has established a prima facie case against the accused, *the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not to overthrow, that prima facie case*.[164] (Emphasis supplied, citation omitted)

Petitioner failed to negate the prosecution's evidence that he had *animus possidendi* or the intent to possess the illegal firearms. In *People v. De Gracia*,[165] this court elucidated on the concept of *animus possidendi* and the importance of the intent to commit an act prohibited by law as differentiated from criminal intent.[166] The accused was charged with the qualified offense of illegal possession of firearms in furtherance of rebellion under Presidential Decree No. 1866 resulting from the *coup d'etat* staged in 1989 by the Reform Armed Forces Movement - Soldiers of the Filipino People.[167] This court held that the actions of the accused established his intent to possess the illegal firearms:

> When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender

---

[163] 536 Phil. 998 (2006) [Per *J.* Ynares-Santiago, First Division].

[164] *Id*. at 1003-1004.

[165] G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716 [Per *J*. Regalado, Second Division].

[166] *Id*. at 726-727.

[167] *Id*. at 720-721.

has the intent to perpetrate the act prohibited by the special law. *Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously*.

In the present case, a distinction should be made between criminal intent and intent to possess. *While mere possession, without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was animus possidendi or an intent to possess on the part of the accused*. Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. *Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.*

*Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon, such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the animus possidendi is absent, there is no offense committed.*

Coming now to the case before us, there is no doubt in our minds that appellant De Gracia is indeed guilty of having intentionally possessed several firearms, explosives and ammunition without the requisite license or authority therefor. Prosecution witness Sgt. Oscar Abenia categorically testified that he was the first one to enter the Eurocar Sales Office when the military operatives raided the same, and he saw De Gracia standing in the room and holding the several explosives marked in evidence as Exhibits D to D-4. At first, appellant denied any knowledge about the explosives. Then, he alternatively contended that his act of guarding the explosives for and in behalf of Col. Matillano does not constitute illegal possession thereof because there was no intent on his part to possess the same, since he was merely employed as an errand boy of Col. Matillano. His pretension

of impersonal or indifferent material possession does not and cannot inspire credence.

*Animus possidendi is a state of mind which may be determined on a case to case basis, taking into consideration the prior and coetaneous acts of the accused and the surrounding circumstances. What exists in the realm of thought is often disclosed in the range of action.* It is not controverted that appellant De Gracia is a former soldier, having served with the Philippine Constabulary prior to his separation from the service for going on absence without leave (AWOL). We do not hesitate, therefore, to believe and conclude that he is familiar with and knowledgeable about the dynamites, "molotov" bombs, and various kinds of ammunition which were confiscated by the military from his possession. As a former soldier, it would be absurd for him not to know anything about the dangerous uses and power of these weapons. A fortiori, he cannot feign ignorance on the import of having in his possession such a large quantity of explosives and ammunition. Furthermore, the place where the explosives were found is not a military camp or office, nor one where such items can ordinarily but lawfully be stored, as in a gun store, an arsenal or armory. Even an ordinarily prudent man would be put on guard and be suspicious if he finds articles of this nature in a place intended to carry out the business of selling cars and which has nothing to do at all, directly or indirectly, with the trade of firearms and ammunition.[168] (Emphasis supplied, citations omitted)

The disquisition in *De Gracia* on the distinction between criminal intent and intent to possess, which is relevant to convictions for illegal possession of firearms, was reiterated in *Del Rosario v. People*.[169] This court ruled that "[i]n the absence of *animus possidendi*, the possessor of a firearm incurs no criminal liability."[170]

In this case, petitioner failed to prove that his possession of the illegal firearms seized from his bag was "temporary,

---

[168] *Id.* at 726-728.

[169] *Del Rosario v. People*, 410 Phil. 642, 664 (2001) [Per *J.* Pardo, First Division].

[170] *Id.*

incidental, casual, or harmless possession[.]"[171] As put by the trial court, petitioner's claim that anyone could have planted the firearms in his bag while it was unattended is flimsy.[172] There are dire consequences in accepting this claim at face value, particularly that no one will be caught and convicted of illegal possession of firearms.

Courts must also weigh the accused's claim against the totality of the evidence presented by the prosecution. This includes determination of: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) reasonableness of the situation creating the opportunity.

Petitioner merely claims that someone must have planted the firearms when he left his bag with the porter. He did not identify who this person could have been and he did not state any motive for this person to plant the firearms in his possession, even if there was indeed an opportunity to plant the firearms.

However, this court is mindful that, owing to the nature of his work, petitioner was a frequent traveler who is well-versed with port security measures. We cannot accept that an average reasonable person aware of travel security measures would leave his belongings with a stranger for a relatively long period of time. Also, records show that petitioner had only one (1) bag. There was no evidence to show that a robust young man like petitioner would have need of the porter's services. The defense did not identify nor present this porter with whom petitioner left his bag.

VIII

The trial court was correct when it dismissed Criminal Case No. CBU-80084 for violation of Republic Act No. 8294, otherwise known as illegal possession of firearms. Section 1 of Republic Act No. 8294 provides:

---

[171] *People v. De Gracia*, G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716, 727 [Per *J.* Regalado, Second Division].

[172] *Rollo*, p. 29, Regional Trial Court's Consolidated Judgment.

SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided, That no other crime was committed.* (Emphasis supplied)

*Agote v. Judge Lorenzo*[173] already settled the question of whether there can be a "separate offense of illegal possession of firearms and ammunition if there is another crime committed[.]"[174] In that case, the petitioner was charged with both illegal possession of firearms and violation of the Gun Ban under Commission on Elections Resolution No. 2826.[175] This court acquitted petitioner in the case for illegal possession of firearms since he simultaneously violated the Gun Ban.[176] This court also held that the unlicensed firearm need not be actually used in the course of committing the other crime for the application of Section 1 of Republic Act No. 8294.[177]

Similarly, *Madrigal v. People*[178] applied the ruling in *Agote* and held that Section 1 of Republic Act No. 8294 is express in its terms that a person may not be convicted for illegal possession of firearms if another crime was committed.[179]

---

[173] 502 Phil. 318 (2005) [Per *J.* Garcia, *En Banc*].

[174] *Id*. at 332.

[175] *Id*. at 323-324.

[176] *Id*. at 335.

[177] *Id*. at 331-334.

[178] 584 Phil. 241 (2008) [Per *J.* Corona, First Division].

[179] *Id*. at 245.

IX

We note that the trial court imposed the penalty of imprisonment for a period of one (1) year and to suffer disqualification to hold public office and deprivation of the right to suffrage. Under Section 264 of Batas Pambansa Blg. 881, persons found guilty of an election offense "shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation."[180] The Indeterminate Sentence Law applies to offenses punished by both the Revised Penal Code and special laws.[181]

The penalty to be imposed is a matter of law that courts must follow. The trial court should have provided minimum and maximum terms for petitioner's penalty of imprisonment as required by the Indeterminate Sentence Law.[182] Accordingly,

---

[180] Batas Blg. 881 (1985), Sec. 264 provides:

SECTION 264. Penalties. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

[181] *See Uriarte v. People*, 540 Phil. 477, 501 (2006) [Per *J*. Callejo, Sr., First Division] and *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 579-581 [Per *J*. Regalado, *En Banc*].

[182] Act No. 4103 (1933), Sec. 1, as amended by Act No. 4225 (1935), Sec. 1, provides:

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

we modify the penalty imposed by the trial court. Based on the facts, we deem it reasonable that petitioner be penalized with imprisonment of one (1) year as minimum to two (2) years as maximum.[183]

X

The records are unclear whether petitioner is currently detained by the state or is out on bail. Petitioner's detention is relevant in determining whether he has already served more than the penalty imposed upon him by the trial court as modified by this court, or whether he is qualified to the credit of his preventive imprisonment with his service of sentence.

Article 29[184] of the Revised Penal Code states:

> ART. 29. Period of preventive imprisonment deducted from term of imprisonment. – Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:
>
> 1. When they are recidivists, or have been convicted previously twice or more times of any crime; and
>
> 2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

---

*See Escalante v. People*, G.R. No. 192727, January 9, 2013, 688 SCRA 362, 374 [Per *J.* Reyes, First Division].

[183] In *Abenes v. Court of Appeals*, 544 Phil. 614, 634 (2007) [Per *J.* Austria-Martinez, Third Division], this court imposed the indeterminate sentence of one (1) year of imprisonment as minimum to two (2) years of imprisonment as maximum. In *Madrigal v. People*, 584 Phil. 241, 245 (2008) [Per *J.* Corona, First Division], the accused was "sentenced to suffer the indeterminate penalty of imprisonment from one year as minimum to three years as maximum[.]"

[184] As amended by Rep. Act No. 10592 (2012), Sec. 1.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from thirty (30) years.

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: Provided, however, That if the accused is absent without justifiable cause at any stage of the trial, the court may motu proprio order the rearrest of the accused: Provided, finally, That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is lestierro [sic], he shall be released after thirty (30) days of preventive imprisonment.

In case credit of preventive imprisonment is due, petitioner must first signify his agreement to the conditions set forth in Article 29 of the Revised Penal Code.[185] If petitioner has already served more than the penalty imposed upon him by the trial court, then his immediate release from custody is in order unless detained for some other lawful cause.[186]

**WHEREFORE**, the Petition is **DENIED.** The Court of Appeals Decision dated September 8, 2012 and the Resolution dated August 23, 2013 in CA-GR CEB CR No. 01606 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Erwin Libo-On Dela Cruz is sentenced to imprisonment of one (1) year as

---

[185] *People v. Oloverio*, G.R. No. 211159, March 28, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/211159.pdf> 17–18 [Per *J.* Leonen, Second Division].

[186] *Agote v. Judge Lorenzo*, 502 Phil. 318, 335 (2005) [Per *J.* Garcia, *En Banc*].

minimum to two (2) years as maximum in accordance with the Indeterminate Sentence Law. The period of his preventive imprisonment shall be credited in his favor if he has given his written conformity to abide by the disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal Code, as amended, and if he is not out on bail.

**SO ORDERED.**

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

---

**SECOND DIVISION**

[G.R. No. 212623. January 11, 2016]

**ENRIQUE G. DE LEON,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SPO3 PEDRITO L. LEONARDO,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; REQUIREMENT UNDER SECTION 14, ARTICLE VIII OF THE CONSTITUTION THAT NO DECISION SHALL BE RENDERED BY ANY COURT WITHOUT EXPRESSING THE FACTS AND THE LAW IN WHICH IT WAS BASED; A PARAMOUNT COMPONENT OF DUE PROCESS AND FAIR PLAY.—** Under Section 14, Article VIII of the Constitution, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. Section 1 of Rule 36 of the Rules of Court provides that a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed

by him and filed with the clerk of the court. Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in arriving at a judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit.*

**2. ID.; ID.; ID.; ID.; THE TRIAL COURT'S DECISION CLEARLY STATED THE FACTS AND THE LAW ON WHICH IT WAS BASED.—** In this case, there was no breach of the constitutional mandate that decisions must express clearly and distinctly the facts and the law on which they are based. The CA correctly stated that the MeTC clearly emphasized in its decision, the factual findings, as well as the credibility and the probative weight of the evidence for the defense *vis-à-vis* the evidence of the prosecution. The MeTC presented both the version of the prosecution and that of the defense. De Leon was not left in the dark. He was fully aware of the alleged errors of the MeTC. The RTC, as an appellate court, found no reason to reverse the decision of the MeTC.

**3. ID.; ID.; ID.; DUE PROCESS; NO BIAS AND PARTIALITY ON THE PART OF THE TRIAL JUDGE.—** Unless there is concrete proof that a judge has a personal interest in the proceedings and that his bias stems from an extra-judicial source, this Court shall always presume that a magistrate shall decide on the merits of a case with an unclouded vision of its facts. Bias and prejudice cannot be presumed, in light especially of a judge's sacred obligation under his oath of office to administer justice with impartiality. There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough. De Leon posits that Judge Soriaso harbored ill feelings towards him which eventually resulted in his conviction. No evidence, however, was ever adduced to justify such allegation. Thus, such argument must also fail.

**4. CRIMINAL LAW; REVISED PENAL CODE; ORAL DEFAMATION OR SLANDER; LIBEL COMMITTED BY**

**ORAL (SPOKEN) MEANS, INSTEAD OF IN WRITING; WHEN COMMITTED.—** Oral Defamation or Slander is libel committed by oral (spoken) means, instead of in writing. It is defined as "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood." The elements of oral defamation are: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) made orally; (3) publicly; (4) and maliciously; (5) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonour, discredit or contempt of the person defamed. Oral defamation may either be simple or grave. It becomes grave when it is of a serious and insulting nature.

**5. ID.; ID.; ID.; WHEN AN ALLEGATION IS CONSIDERED DEFAMATORY.—** To determine whether a statement is defamatory, the words used in the statement must be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. It must be stressed that words which are merely insulting are not actionable as libel or slander *per se*, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself.

**6. ID.; ID.; ID.; ID.; DETERMINING FACTORS IN CONSIDERING THE GRAVITY OF DEFAMATION; CASE AT BAR.—** In this case, the Court agrees that the words uttered by De Leon were defamatory in nature. It is, however, of the view that the same only constituted simple oral defamation. Whether the offense committed is serious or slight oral defamation, depends not only upon the sense and grammatical meaning of the utterances but also upon the special circumstances of the case, like the social standing or the advanced age of the offended party. "The gravity depends upon: (1) the expressions used; (2) the personal relations of the accused and the offended party; and (3) the special circumstances of the case, the antecedents or relationship between the offended party and the offender, which may tend to prove the intention of the offender at the time. In particular, it is a rule that uttering defamatory

words in the heat of anger, with some provocation on the part of the offended party constitutes only a light felony."

**7. ID.; ID.; ID.; ID.; ID.; SLIGHT ORAL DEFAMATION COMMITTED IN CASE AT BAR.—** Considering the factual backdrop of this case, the Court is convinced that the crime committed by De Leon was only slight oral defamation for the following reasons: First, as to the relationship of the parties, they were obviously acquainted with each other as they were former jogging buddies. Prior to the purported gun-pointing incident, there was no reason for De Leon to harbor ill feelings towards SPO3 Leonardo. Second, as to the timing of the utterance, this was made during the first hearing on the administrative case, shortly after the alleged gun-pointing incident. The gap between the gun-pointing incident and the first hearing was relatively short, a span of time within which the wounded feelings could not have been healed. The utterance made by De Leon was but a mere product of emotional outburst, kept inside his system and unleashed during their encounter. Third, such words taken as a whole were not uttered with evident intent to strike deep into the character of SPO3 Leonardo as the animosity between the parties should have been considered. It was because of the purported gun-pointing incident that De Leon hurled those words. There was no intention to ridicule or humiliate SPO3 Leonardo because De Leon's utterance could simply be construed as his expression of dismay towards his actions as his friend and member of the community.

**8. ID.; ID.; ID.; ID.; CRITICISM CONSIDERED CONSTRUCTIVE WHEN MADE IN CONNECTION WITH THE PUBLIC OFFICER'S PERFORMANCE OF DUTY.—** The Court finds that even though SPO3 Leonardo was a police officer by profession, his complaint against De Leon for oral defamation must still prosper. It has been held that a public officer should not be too onion-skinned and should be tolerant of criticism. The doctrine, nevertheless, would only apply if the defamatory statement was uttered in connection with the public officer's duty. x x x One of man's most prized possessions is his integrity. There lies a thin line between criticism and outright defamation. When one makes commentaries about the other's performance of official duties, the criticism is considered constructive, then aimed for the betterment of his or her service to the public. It is thus, a continuing duty on the part of the public officer

to make room for improvement on the basis of this constructive criticism in as much as it is imperative on the part of the general public to make the necessary commentaries should they see any lapses on the part of the public officer.

**9. ID.; ID.; ID.; ID.; ID.; CRITICISM WAS MORE DESTRUCTIVE THAN CONSTRUCTIVE AS IT INVOLVED SPO3 LEONARDO'S REPUTATION AS A PRIVATE INDIVIDUAL OF THE COMMUNITY; CASE AT BAR.—** In this case, however, the criticism was more destructive than constructive and, worse, it was directed towards the personal relations of the parties. To reiterate, their altercation and De Leon's subsequent defamation were not in connection with SP03 Leonardo's public duties. Taking into account the circumstances of the incident, calling him *"walanghiya"* and *"mangongotong na pulis"* was evidently geared towards his reputation as a private individual of the community. Thus, the defamation committed by De Leon, while only slight in character, must not go unpunished.

**LEONEN, *J., dissenting opinion*:**

**1. CRIMINAL LAW; REVISED PENAL CODE; ORAL DEFAMATION; THE ALLEGED DEFAMATORY UTTERANCES MUST BE ASSESSED AGAINST THE FACTUAL BACKDROP BEFORE THE ALLEGED INCIDENT; AS A POLICE OFFICER, A PUBLIC SERVANT, RESPONDENT, CANNOT BE THIN-SKINNED, AS CRITICISM IS A NATURAL CONSEQUENCE OF BEING CLOTHED WITH AUTHORITY.—** Petitioner should be absolved of any criminal liability. The words he allegedly used against SPO3 Leonardo were "*walanghiya*," "*mangongotong na pulis*," and "*ang yabang[-]yabang*." These utterances must be assessed against the following context: the backdrop of SPO3 Leonardo being a public servant, and that the incident allegedly happened as the parties were about to enter the People's Law Enforcement Board for SPO3 Leonardo's administrative hearing. The words chosen by petitioner could hardly be considered to ascribe to SPO3 Leonardo anything seriously offensive, much less to impute a vice that would put to question the police officer's morality or professionalism. As a public servant, SPO3 Leonardo cannot be thin-skinned,

as criticism is a natural consequence of being a person clothed with authority. Petitioner's choice of words could hardly be considered "personal," especially in light of the heightened emotions brought about by the gun-pointing incident. That the incident allegedly happened just before the parties entered the People's Law Enforcement Board's office also diminishes any claim that the utterances were made to publicly embarrass SPO3 Leonardo.

**2. ID.; ID.; ID.; THE STANDARD FOR ORAL DEFAMATION, ESPECIALLY IN CASES INVOLVING PERSONS OF AUTHORITY, SHOULD BE SUBJECT TO RE-EVALUATION; IN A DEMOCRATIC COUNTRY LIKE OURS, THE PROTECTION OF THE FREE EXPRESSION IS PRIMORDIAL AS IT IS TANTAMOUNT TO UPHOLDING THE SOVEREIGNTY OF THE PEOPLE, WHO SHOULD BE ALLOWED TO EXPRESS THEMSELVES WITHOUT THE THREAT OF GOVERNMENT REPRISAL OVER THE SLIGHTEST FEELING OF OFFENSE.—** It is my position that the standard for oral defamation, especially in cases involving persons of authority, should be subject to a re-evaluation. In *Chavez v. Court of Appeals*, the objective of libel laws was explained, thus: Libel stands as an exception to one of the most cherished constitutional rights, that of free expression. *While libel laws ensure a modicum of responsibility in one's own speech or expression, a prescribed legal standard that conveniences the easy proliferation of libel suits fosters an atmosphere that inhibits the right to speak freely*. When such a prescribed standard is submitted for affirmation before this Court, as is done in this petition, it must receive the highest possible scrutiny, as it may interfere with the most basic of democratic rights. A police officer, who is a public servant cloaked with authority, should be prepared to take criticism especially in instances where emotions are running high and there is no apparent intent to malign his or her person. Being "sensitive" has no place in this line of service, more so when allowing otherwise has the potential to create a chilling effect on the public. In a democratic country like ours, the protection of free expression is primordial as it is tantamount to upholding the sovereignty of the People. The People should be allowed to express themselves without the threat of government reprisal over the slightest feeling of offense.

**APPEARANCES OF COUNSEL**

*Fortun and Santos Law Offices* for petitioner.
*The Solicitor General* for public respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a petition for review on *certiorari* seeking to reverse and set aside the November 14, 2013 Decision[1] and the May 20, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 35390, which affirmed the September 28, 2012 Decision[3] of the Regional Trial Court, Branch 27, Manila (*RTC*), sustaining the conviction of accused Enrique De Leon (*De Leon*) for Grave Oral Defamation by the Metropolitan Trial Court, Branch 6, *Manila (MeTC).*

Records show that De Leon was charged with Grave Oral Defamation in the Information filed before the MeTC, docketed as Criminal Case No. 453376-CR, the accusatory portion of which reads:

> That, on or about April 17, 2006, in the City of Manila, Philippines, the said accused, with the deliberate intent to besmirch the honor and reputation of one SPO3 PEDRITO L. LEONARDO, did and there wilfully, unlawfully, feloniously publicly proffer against the latter slanderous words and expressions such as "WALANGHIYA KANG MANGONGOTONG NA PULIS KA, ANG YABANG YABANG MO NOON. PATAY KA SA AKIN MAMAYA [,]" and other words and expressions of similar import, thereby bringing the said SPO3 PEDRITO L. LEONARDO into public contempt, discredit and ridicule.

---

[1] *Rollo* pp. 49-63, penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justice Rebecca De Guia Salvador and Associate Justice Samuel H. Gaerlan, concurring.

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

[3] *Id*. at 219-224, penned by Judge Teresa P. Soriaso.

Contrary to law.[4]

Upon arraignment, De Leon entered a plea of not guilty. Pursuant to the Supreme Court Circular No. 20-2002, De Leon and private respondent SPO3 Pedrito Leonardo *(SPO3 Leonardo)* appeared before the Philippine Mediation Center to settle the civil aspect of the case. The conciliation meeting, however, bogged down. Hence, the proceedings before the lower court continued. During the pre-trial, the parties pre-marked their respective exhibits and moved for the trial to commence.

*Version of the Prosecution*

The prosecution presented three witnesses, namely: private respondent SPO3 Leonardo, Carlito Principe (*Principe*) and Jennifer Malupeng (*Malupeng*). Their combined testimonies narrated that De Leon and his son, John Christopher De Leon *(John),* filed a complaint for Grave Misconduct against SPO3 Leonardo before the People's Law Enforcement Board *(PLEB),* docketed as Administrative Case Nos. 06-02-060 (291) II and 06-02-061 (292) II.

The first hearing was scheduled on April 17, 2006 at the PLEB office on the 5th Floor of the Manila City Hall; At around 1:30 o'clock in the afternoon, while waiting outside the PLEB office on the 5th floor of the Manila City Hall, SPO3 Leonardo noticed De Leon and several of his companions approaching. Before entering the PLEB office, De Leon uttered these words to SPO3 Leonardo, "*Walanghiya kang mangongotong na pulis ka, ang yabang yabang mo noon. Patay ka sa akin ngayon.*"

The words uttered by De Leon caused SPO3 Leonardo embarrassment because there were several persons present at the PLEB premises. He could have arrested De Leon but he did not want to make a scene. Afterwards, De Leon's wife, Concepcion, emerged from the said office and apologized to Leonardo for her husband's actuations. SPO3 Leonardo calmly proceeded to the Special Operations Group of the Philippine National Police *(PNP)* located at the Manila City Hall to have

[4] *Id*. at 77.

the incident entered in its blotter. On the same day, SPO3 Leonardo filed his complaint at the Office of the City Prosecutor (*OCP*) together with Principe.[5]

*Version of the Defense*

The defense presented Fernando Manalo *(Manalo),* Ruperto Molera *(Molera),* Concepcion De Leon *(Concepcion)* and the accused himself as witnesses.

From their testimonies, the defense claimed that there was a prior incident that took place on the morning of February 27, 2006 when De Leon, with his son John, while having breakfast with their fellow joggers at the Philippine National Railroad-Tutuban Station, were approached by SPO3 Leonardo who arrived on his scooter. With his gun drawn, SPO3 Leonardo walked fast towards the group and at a distance of two meters, more or less, he said, "*Putang ina mo, tapos ka na Ricky Boy,* referring to De Leon." He pressed the trigger but the gun did not fire, when he was to strike again, De Leon was able to escape with the help of John.[6]

Consequently, De Leon and John filed an administrative complaint for grave misconduct against SPO3 Leonardo before the PLEB and the first hearing was set on April 17, 2006. In his *Sinumpaang Salaysay sa Paghahabla* filed before the PLEB, De Leon narrated that he and SPO3 Leonardo were former jogging buddies and that the latter wanted to borrow money from the former in the amount of ₱150,000.00, but he declined. SPO3 Leonardo became upset with him, culminating in the gun-pointing incident.[7]

On April 17, 2006, at around 1:30 o'clock in the afternoon, De Leon, in the company of his wife Concepcion, Manalo, Molera, and several others went to the PLEB office to attend the hearing. When De Leon and his companions arrived at the

---

[5] *Id*. at 78-80.

[6] *Id*. at 206-207.

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

PLEB, they saw SPO3 Leonardo seated on the bench alone; that they were about to pass when SPO3 Leonardo stood up, badmouthed and threatened De Leon by uttering the words, "*Putang-ina mong mayabang ka, pag di mo inurong demanda mo sa akin, papatayin kita."*

Moments later, they caused the incident to be entered in the police blotter. From there, they returned to the PLEB office where they were advised to file charges against SPO3 Leonardo in Camp Crame. Malupeng and Principe were not seen at the PLEB office premises. Molera even tried to pacify SPO3 Leonardo by saying, "*Itok* (referring to SPO3 Leonardo), *ano ka ba naman andito na tayo sa husgado, ayaw mo pang tigilan ang kamumura kay Ricky,* referring to De Leon." De Leon did not do anything, he simply entered the PLEB office and sat down there because he got nervous. He also denied apologizing to SPO3 Leonardo.

Also on April 17, 2006, De Leon utilized the police blotter to file a case against SPO3 Leonardo in Camp Crame. He filed the said case only after he received the subpoena from the OCP for the case filed against him by SPO3 Leonardo. Although he was with his lawyer when he went to Camp Crame, the latter did not advise him to file a complaint in the OCP right away. According to De Leon, he also saw SPO3 Leonardo deposit his service firearm while at the PLEB office.[8]

**The Ruling of the MeTC**

In its Decision,[9] dated April 15, 2011, the MeTC found De Leon guilty beyond reasonable doubt of Grave Oral Defamation. The trial court considered SPO3 Leonardo's police blotter as *prima facie* evidence of the facts contained therein. His actuations on the day of the incident were spontaneous. As borne by the records, he immediately reported the incident and filed his complaint on that very same day. Considering the animosity between him and De Leon, it was contrary to human experience to expect the him to arrest the latter right there and

[8] *Id*. at 81-84.

[9] *Id*. at 77-89.

then when his motives would necessarily be met with doubt later on. Neither was there any ill-motive on the part of witness Principe whose testimony was given great probative consequence.[10] The MeTC found De Leon's defense as only an afterthought and self-serving as he merely filed the counter-charges against Leonardo after he had received the subpoena from the OCP. The dispositive portion of the MeTC decision reads:

> **WHEREFORE**, with the foregoing, the Court finds the accused Enrique De Leon *y* Garcia **GUILTY** beyond reasonable doubt of the crime charged and is hereby **SENTENCED** to suffer the indeterminate penalty of 4 months and 1 day of *arresto mayor*, as minimum penalty, to 1 year, 1 month and 11 days of *prision correccional* in its minimum period, as maximum penalty.
>
> On the civil aspect *ex delicto*, the accused is **ORDERED** to pay the private complainant ₱10,000 as moral damages.
>
> SO ORDERED.[11]

The verdict being unacceptable to him, De Leon filed his Notice of Appeal,[12] dated April 18, 2011.

On May 4, 2011, the RTC issued the Order[13] directing De Leon to file his appeal memorandum. De Leon, however, failed to comply. For his failure to file the same, the RTC issued another Order,[14] dated December 28, 2011, dismissing his appeal. De Leon then filed a motion for reconsideration[15] on January 30, 2012, which was granted by the RTC in its Order,[16] dated May 22, 2012.

On June 15, 2012, De Leon filed his appeal memorandum[17] and argued, among others, that the MeTC decision lacked the

---

[10] *Id*. at 86.

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

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

[13] *Id*. at 165.

[14] *Id*. at 96.

[15] *Id*. at 98-106.

[16] *Id*. at 176-177.

[17] *Id*. at 178-205.

necessary constitutional and procedural requirements of a valid decision.

**The Ruling of the RTC**

On September 28, 2012, the RTC rendered its decision affirming *in toto* the ruling of the MeTC. It opined that where the issue was the extent of credence properly given to the declarations made by witnesses, the findings of the trial court were accorded great weight and respect. In appreciating the evidence of the prosecution, the RTC observed that the MeTC properly discussed in *seriatim* how it arrived at De Leon's conviction. Thus, contrary to his contentions, the findings of the MeTC were clearly elucidated.[18]

On October 30, 2012, De Leon filed his motion for reconsideration,[19] but it was denied by the RTC in its November 27, 2012 Order.

Aggrieved, De Leon filed a petition for review under Rule 42 before the CA.

**The Ruling of the CA**

The CA affirmed the RTC decision with modification as to the imposed penalty. The CA stated that the issue of credibility was already raised with the RTC and was resolved against De Leon. The CA found that he had not shown any sufficient reason to justify a departure from the factual findings of the MeTC, which were affirmed by the RTC.[20]

According to the CA, to call SPO3 Leonardo a "*walanghiya,*" "*mayabang*" and "*mangongotong*" in public unquestionably constituted grave oral defamation. These words seriously attacked SPO3 Leonardo's character. The term "*mangongotong*" actually imputed a crime that was dishonorable to him as a police authority. There having been no provocation on the part of SPO3 Leonardo and that the utterances complained of were not made in the heat

---

[18] *Id*. at 224.

[19] *Id*. at 225-232.

[20] *Id*. at 59.

of unrestrained anger or obfuscation, the RTC did not err in upholding the judgment against De Leon for the crime of grave oral defamation.[21] The decretal portion of the CA decision reads:

> **WHEREFORE,** the petition for review is **DENIED.** The assailed decision of the RTC is **AFFIRMED** except that the minimum sentence of imprisonment is modified to the extent that the penalty to be served shall be: four (4) months as minimum [minus the one (1) day] to a maximum of one (1) year, one (1) month and eleven (11) days, (as imposed by the trial court).
>
> **IT IS SO ORDERED**.[22]

De Leon moved for partial reconsideration of the CA decision but to no avail.

Hence, this petition, where De Leon raises matters in question that can be summarized as follows:

**ISSUES**

**I. WHETHER THE DECISION OF THE MeTC FAILED TO INCLUDE THE FACTS AND THE LAW UPON WHICH THE DECISION WAS BASED**

**II. WHETHER DE LEON'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.**

In his Petition for Review,[23] De Leon again argues that the MeTC decision suffers from constitutional infirmity. The lower court should have decided the case on the basis of the testimonies of the witnesses for the defense. Also, the conviction was based simply on De Leon's conduct during trial and not on the merits of the case.[24]

In its Comment,[25] the Office of the Solicitor General *(OSG)* countered that the testimonies of SPO3 Leonardo and Principe

---

[21] *Id*. at 61.

[22] *Id*. at 63.

[23] *Id*. at 3-41.

[24] *Id*. at 27.

[25] *Id*. at 265-287.

were credible and competent. Further, in the absence of clear and convincing extrinsic evidence to prove the charge of bias and partiality on the part of MeTC Judge Teresa Soriaso *(Judge Soriaso),* the presumption of regularity in the performance of the judge's function will stand.[26]

In his Reply,[27] however, De Leon insisted that the prosecution failed to prove his guilt beyond reasonable doubt. The intent on his part to diminish the esteem, goodwill or confidence of SPO3 Leonardo or to excite adverse, derogatory or unpleasant feelings or opinion of others against him was lacking as his testimony was made in good faith, without malice. He also reiterated his stand that there was no finding of clear and distinct facts and law to serve as a basis for its conclusion of convicting him for the crime charged and that the MeTC decision was not based on the merits, rather on the personal sentiments harbored by Judge Soriaso against him.[28]

## The Court's Ruling

*The MeTC Decision clearly stated the facts and the law on which it was based*

Under Section 14, Article VIII of the Constitution, no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. Section 1 of Rule 36 of the Rules of Court provides that a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of the court.

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. A decision that does not clearly and distinctly state the facts and the law on which it is based

---

[26] *Id*. at 282.

[27] *Id*. at 297-312.

[28] *Id*. at 300-309.

leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.

More than that, the requirement is an assurance to the parties that, in arriving at a judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*.[29]

The standard "expected of the judiciary" is that the decision rendered makes clear why either party prevailed under the applicable law to the facts as established. Nor is there any rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. The discretion of the particular judge in this respect, while not unlimited, is necessarily broad. There is no sacramental form of words which he must use upon pain of being considered as having failed to abide by what the Constitution directs.[30]

It is understandable that courts, with heavy dockets and time constraints, often find themselves with little to spare in the preparation of decisions to the extent most desirable. Judges might learn to synthesize and to simplify their pronouncements. Nevertheless, concisely written such as they may be, decisions must still distinctly and clearly express, at least in minimum essence, its factual and legal bases.[31]

In this case, there was no breach of the constitutional mandate that decisions must express clearly and distinctly the facts and the law on which they are based. The CA correctly stated that the MeTC clearly emphasized in its decision, the factual findings, as well as the credibility and the probative weight of the evidence for the defense *vis-à-vis* the evidence of the prosecution. The MeTC presented both the version of the prosecution and that

---

[29] *Dela Peña v. Court of Appeals*, 598 Phil. 862, 975 (2009).

[30] *Bernabe v. Geraldez*, 160 Phil. 102, 104 (1975).

[31] *Chung v. Mondragon*, G.R. No. 179754, November 21, 2012, 686 SCRA 112.

of the defense. De Leon was not left in the dark. He was fully aware of the alleged errors of the MeTC. The RTC, as an appellate court, found no reason to reverse the decision of the MeTC.

Likewise, when it comes to credibility of witnesses, this Court accords the highest respect, even finality, to the evaluation by the lower court of the testimonies of the witnesses presented before it.[32]

Although De Leon claims that the testimony of Principe is incredible, the MeTC, the RTC and the CA perceived it otherwise. First, there was no ill motive on the part of Principe for him to weave a tale of lies against De Leon. Second, Judge Soriaso was able to observe Principe's demeanor during trial. He was observed to be candid and composed and his conduct on the witness stand did not mirror that of an insincere or false witness.

*No bias and partiality on the part of Judge Soriaso*

Unless there is concrete proof that a judge has a personal interest in the proceedings and that his bias stems from an extra-judicial source, this Court shall always presume that a magistrate shall decide on the merits of a case with an unclouded vision of its facts.[33] Bias and prejudice cannot be presumed, in light especially of a judge's sacred obligation under his oath of office to administer justice with impartiality. There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough.[34]

De Leon posits that Judge Soriaso harbored ill feelings towards him which eventually resulted in his conviction. No evidence, however, was ever adduced to justify such allegation. Thus, such argument must also fail.

---

[32] *Lumanog v. People*, 644 Phil. 296, 395 (2010).

[33] *Gochan v. Gochan*, 446 Phil. 433, 439 (2003).

[34] *Lorenzana v. Austria*, A.M. No. RTJ-09-2200, April 2, 2014, 720 SCRA 319.

*The crime committed is only Slight Oral Defamation*

Oral Defamation or Slander is libel committed by oral (spoken) means, instead of in writing. It is defined as "the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood."[35] The elements of oral defamation are: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) made orally; (3) publicly; (4) and maliciously; (5) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonour, discredit or contempt of the person defamed. Oral defamation may either be simple or grave. It becomes grave when it is of a serious and insulting nature.

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. To determine whether a statement is defamatory, the words used in the statement must be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.[36] It must be stressed that words which are merely insulting are not actionable as libel or slander *per se*, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself.[37]

---

[35] *Villanueva v. People*, 521 Phil. 191, 200 (2006).

[36] *Lopez v. People*, 658 Phil. 20, 31 (2011).

[37] *MVRS Publications v. Islamic Da'wah Council of the Phil.*, 444 Phil. 230, 241 (2003).

In this case, the Court agrees that the words uttered by De Leon were defamatory in nature. It is, however, of the view that the same only constituted simple oral defamation.

Whether the offense committed is serious or slight oral defamation, depends not only upon the sense and grammatical meaning of the utterances but also upon the special circumstances of the case, like the social standing or the advanced age of the offended party.[38] "The gravity depends upon: (1) the expressions used; (2) the personal relations of the accused and the offended party; and (3) the special circumstances of the case, the antecedents or relationship between the offended party and the offender, which may tend to prove the intention of the offender at the time. In particular, it is a rule that uttering defamatory words in the heat of anger, with some provocation on the part of the offended party constitutes only a light felony."[39]

There are cases where the Court considered the circumstances of the concerned parties and held that the defamation was grave serious in nature.

In *U.S. v. Tolosa*,[40] where a woman of violent temper hurled offensive and scurrilous epithets including words imputing unchastity against a respectable married lady and tending to injure the character of her young daughters, the Court ruled that the crime committed was grave slander. In *Balite v. People*,[41] the accused was found guilty of grave oral defamation as the scurrilous words he imputed to the offended party constituted the crime of estafa.

In some cases, the Court has declared that the defamatory utterances were not grave on the basis of the peculiar situations obtaining.

---

[38] Reyes, *The Revised Penal Code* Book 2, 2008 Ed., p. 1020.

[39] *Agbayani v. Court of Appeals*, 689 Phil. 11, 28 (2012).

[40] 37 Phil. 166 (1917).

[41] 124 Phil. 868 (1956).

In the case of *People v. Arcand*,[42] a priest called the offended party a gangster in the middle of the sermon. The Court affirmed the conviction of the accused for slight slander as there was no imputation of a crime, a vice or immorality. In *Pader v. People*,[43] the Court ruled that the crime committed was only slight oral defamation as it considered the expression, "*putang ina mo,*" as expression to convey anger or displeasure. Such utterance was found not seriously insulting considering that he was drunk when he uttered those words and his anger was instigated by what the private complainant did when the former's father died. Also in *Jamilano v. Court of Appeals*,[44] where calling someone "*yabang*" (boastful or arrogant) was found not defamatory, the complainant's subsequent recourse to the law on oral defamation was not sustained by the Court.

Considering the factual backdrop of this case, the Court is convinced that the crime committed by De Leon was only slight oral defamation for the following reasons:

First, as to the relationship of the parties, they were obviously acquainted with each other as they were former jogging buddies. Prior to the purported gun-pointing incident, there was no reason for De Leon to harbor ill feelings towards SPO3 Leonardo.

Second, as to the timing of the utterance, this was made during the first hearing on the administrative case, shortly after the alleged gun- pointing incident. The gap between the gun-pointing incident and the first hearing was relatively short, a span of time within which the wounded feelings could not have been healed. The utterance made by De Leon was but a mere product of emotional outburst, kept inside his system and unleashed during their encounter.

Third, such words taken as a whole were not uttered with evident intent to strike deep into the character of SPO3 Leonardo as the animosity between the parties should have been considered.

---

[42] 68 Phil. 601 (1939).

[43] 381 Phil. 932-937 (2000).

[44] 140 Phil. 524-532 (1969).

It was because of the purported gun-pointing incident that De Leon hurled those words. There was no intention to ridicule or humiliate SPO3 Leonardo because De Leon's utterance could simply be construed as his expression of dismay towards his actions as his friend and member of the community.

*The defamatory remarks were not in connection with the public officer's duty*

Finally, the Court finds that even though SPO3 Leonardo was a police officer by profession, his complaint against De Leon for oral defamation must still prosper. It has been held that a public officer should not be too onion-skinned and should be tolerant of criticism. The doctrine, nevertheless, would only apply if the defamatory statement was uttered in connection with the public officer's duty. The following cases are illustrative:

In the case of *Evangelista v. Sepulveda,*[45] petitioner lawyer made the following statements in his appeal brief:

> THIS BLUNDER of the TRIAL COURT, AT ONCE SHOCKING AND UNPARDONABLE, BETRAYS BOTTOMLESS IGNORANCE OF LEGAL FUNDAMENTALS AND IS A BLACK REFLECTION ON THE COMPETENCE OF ITS INCUMBENT. IT COULD BE A GROUND FOR PROSECUTION AND ADMINISTRATIVE ACTION.
>
> This shocking, colossal blunder deserves condemnation no end and cries for immediate relief in order to avoid repetitions of miscarriages of justice.

Appalled by the contents of the brief, the trial court judge charged the petitioner for indirect contempt. In absolving the latter, this Court recognized that lawyers sometimes get carried away and forget themselves especially if they act as their own counsel. Hence, if the judge had felt insulted, he should have sought redress by other means as it was not seemly for him to be a judge of his own cause.

---

[45] 206 Phil. 598 (1983).

In *Yabut v. Ombudsman,*[46] petitioner vice mayor was directing traffic as he was concurrently the commander of the Traffic Management Division at that time. On board his vehicle was private respondent Doran, who was impatient about the traffic. Angry words turned into an exchange of punches and Doran stuck a dirty finger at petitioner. Charged with an administrative case before the Office of the Ombudsman, petitioner vice mayor was suspended. The attendant circumstances served no excuse for the mauling incidents that followed. Though the acts of Doran were no less than "an act of spite, degradation and mockery," it did not justify an equally abhorrent reaction from petitioner. This Court wrote that public officers, especially those who were elected, should not be too onion-skinned as they are always looked upon to set the example how public officials should correctly conduct themselves even in the face of extreme provocation.

In both cases, the criticisms directed towards the public officer were made in connection with the dissatisfaction of the performance of their respective duties. Here, however, the malicious imputations were directed towards the public officer with respect to their past strained personal relationship. To note, De Leon's displeasure towards SPO3 Leonardo could be traced to a gun-pointing incident where the latter was angered when the former failed to grant him a private loan transaction in the amount of ₱150,000.00.

One of man's most prized possessions is his integrity. There lies a thin line between criticism and outright defamation. When one makes commentaries about the other's performance of official duties, the criticism is considered constructive, then aimed for the betterment of his or her service to the public. It is thus, a continuing duty on the part of the public officer to make room for improvement on the basis of this constructive criticism in as much as it is imperative on the part of the general public to make the necessary commentaries should they see any lapses on the part of the public officer. In this case, however, the

[46] G.R. No. 111304, June 17, 1994, 233 SCRA 310.

criticism was more destructive than constructive and, worse, it was directed towards the personal relations of the parties.

To reiterate, their altercation and De Leon's subsequent defamation were not in connection with SPO3 Leonardo's public duties. Taking into account the circumstances of the incident, calling him "*walanghiya*" and "*mangongotong na pulis*" was evidently geared towards his reputation as a private individual of the community. Thus, the defamation committed by De Leon, while only slight in character, must not go unpunished.

Accordingly, De Leon should be meted out only the penalty of *arresto mayor* or a fine not exceeding ₱200.00 pesos, for committing slight oral defamation as prescribed under Article 358 of the Revised Penal Code.

**WHEREFORE,** the petition is **PARTIALLY GRANTED**. The April 15, 2011 Decision of the Metropolitan Trial Court, Branch 6, Manila, is hereby **MODIFIED** to read as follows:

> **WHEREFORE,** finding Enrique De Leon guilty beyond reasonable doubt of the crime of Slight Oral Defamation, the Court hereby sentences him to pay a fine of ₱200.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.
>
> On the civil aspect *ex delicto*, the accused is ordered to pay the private complainant ₱5,000.00 as moral damages.
>
> **SO ORDERED.**

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

*Leonen, J.,* see dissenting opinion.

## DISSENTING OPINION

**LEONEN, *J.*:**

I vote to grant the Petition. Petitioner should be acquitted of the crime of oral defamation.

The Decision downgrades petitioner's liability from grave oral defamation to slight oral defamation. This is due to the following circumstances: firstly, petitioner and SPO3 Pedrito L. Leonardo (SPO3 Leonardo) had been acquaintances and jogging buddies prior to their dispute. Petitioner allegedly had no reason to harbor ill feelings towards SPO3 Leonardo before the gun-pointing incident.[1] Secondly, the alleged defamation occurred during the first administrative hearing of SPO3 Leonardo's Grave Misconduct case. At that time, petitioner's emotions, brought about by the gun-pointing incident, could have still been in a heightened state and could have led to the utterances.[2] Lastly, petitioner's words could not be considered as having been driven by the intent to ridicule or humiliate, but were a mere expression of his disappointment over SPO3 Leonardo's actions as a police officer.[3]

In *Victorio v. Court of Appeals*,[4] oral defamation or slander was defined as "the speaking of base and defamatory words [that] tend to prejudice another in his reputation, office, trade, business or means of livelihood[.]"[5] In *Sazon v. Court of Appeals*,[6] which involved a libel case, this court discussed the test to determine whether the words chosen by an accused are defamatory:

Jurisprudence has laid down a test to determine the defamatory character of words used in the following manner, *viz*:

> "Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander. *A charge is sufficient if the words are calculated to*

---

[1] *Ponencia*, p. 11.

[2] *Id*. at 2 and 11-12.

[3] *Id*. at 12.

[4] 255 Phil. 630 (1989) [Per *J*. Bidin, Third Division].

[5] *Id*. at 636. It is noted that the case referred to American jurisprudence for this definition.

[6] 325 Phil. 1053 (1996) [Per *J*. Hermosisima, Jr., First Division].

> *induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue, or reputation, or to hold the person or persons up to public ridicule*[.]"[7] (Emphasis in the original, citation omitted)

Petitioner should be absolved of any criminal liability. The words he allegedly used against SPO3 Leonardo were "walanghiya," "mangongotong na pulis," and "ang yabang[-]yabang."[8] These utterances must be assessed against the following context: the backdrop of SPO3 Leonardo being a public servant, and that the incident allegedly happened as the parties were about to enter the People's Law Enforcement Board for SPO3 Leonardo's administrative hearing. The words chosen by petitioner could hardly be considered to ascribe to SPO3 Leonardo anything seriously offensive, much less to impute a vice that would put to question the police officer's morality or professionalism. As a public servant, SPO3 Leonardo cannot be thin- skinned, as criticism is a natural consequence of being a person clothed with authority. Petitioner's choice of words could hardly be considered "personal," especially in light of the heightened emotions brought about by the gun-pointing incident. That the incident allegedly happened just before the parties entered the People's Law Enforcement Board's office also diminishes any claim that the utterances were made to publicly embarrass SPO3 Leonardo.

It is my position that the standard for oral defamation, especially in cases involving persons of authority, should be subject to a re-evaluation. In *Chavez v. Court of Appeals*,[9] the objective of libel laws was explained, thus:

> Libel stands as an exception to one of the most cherished constitutional rights, that of free expression. *While libel laws ensure a modicum*

---

[7] *Id*. at 1063-1064.

[8] *Ponencia*, p. 2. The Ponencia quotes the Information in Criminal Case No. 453376-CR for Grave Oral Defamation.

[9] 543 Phil. 262 [Per *J*. Tinga, Second Division].

*of responsibility in one's own speech or expression, a prescribed legal standard that conveniences the easy proliferation of libel suits fosters an atmosphere that inhibits the right to speak freely.* When such a prescribed standard is submitted for affirmation before this Court, as is done in this petition, it must receive the highest possible scrutiny, as it may interfere with the most basic of democratic rights.[10] (Emphasis supplied)

A police officer, who is a public servant cloaked with authority, should be prepared to take criticism especially in instances where emotions are running high and there is no apparent intent to malign his or her person. Being "sensitive" has no place in this line of service, more so when allowing otherwise has the potential to create a chilling effect on the public. In a democratic country like ours, the protection of free expression is primordial as it is tantamount to upholding the sovereignty of the People. The People should be allowed to express themselves without the threat of government reprisal over the slightest feeling of offense.

**ACCORDINGLY**, I vote to **GRANT** the Petition.

---

**SECOND DIVISION**

[G.R. No. 213215. January 11, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RUBEN BARON,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; REQUIREMENTS TO SUSTAIN A CONVICTION BASED**

---

[10] *Id.* at 274.

**ON CIRCUMSTANTIAL EVIDENCE; PRESENT IN CASE AT BAR.—** The requirements for circumstantial evidence to sustain a conviction are settled. Rule 133, Section 4 of the Revised Rules on Evidence provides: Section 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstances; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Moreover, "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." A careful examination of the records shows that there is nothing that warrants a reversal of the Decisions of the Regional Trial Court and of the Court of Appeals. As pointed out by the Court of Appeals, a multiplicity of circumstances, which were attested to by credible witnesses and duly established from the evidence, points to no other conclusion than that accused-appellant was responsible for the rape and killing of the seven-year-old child.

**2. CRIMINAL LAW; REVISED PENAL CODE; RAPE WITH HOMICIDE; ESTABLISHED IN CASE AT BAR.—** Testimonies regarding these details were given by disinterested witnesses whom Baron himself had not managed to discredit for having any ill-motive against him. Two (2) of the prosecution witnesses are even children of tender age. As against these details and testimonies, all that accused-appellant had offered in defense were denial and alibi—defenses that jurisprudence has long considered weak and unreliable. It is hardly a relief to accused-appellant that two (2) witnesses have testified in his defense. Even their testimonies failed to definitively establish that accused-appellant neither raped nor killed AAA. Defense witness Flordeliza Baron even admitted that during the critical time between 5:00 and 6:00 p.m. of May 4, 1999, when the rape and killing most likely took place, she was never really aware of accused-appellant's whereabouts. There is, thus, no error in the Regional Trial Court's and the Court of Appeals' conclusion that accused-appellant Ruben Baron is guilty beyond reasonable doubt of the crime of rape with homicide of the seven-year-old child, AAA. His conviction must be affirmed.

**3. ID.; ID.; CIVIL LIABILITY; IT WAS ERROR FOR THE TRIAL COURT TO AWARD TEMPERATE DAMAGES ALONGSIDE ACTUAL DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES INCREASED DUE TO THE HEINOUSNESS OF THE CRIME; EXEMPLARY DAMAGES LIKEWISE AWARDED.—** It was error for the Regional Trial Court to award temperate damages alongside actual damages. Thus, we delete the award of temperate damages. In *People v. Gambao*, we took occasion to require an increase in the minimum award of damages where the death penalty would have been imposed, were it not for a law preventing it. x x x Thus, for the sheer heinousness and depravity of accused-appellant's acts of raping and drowning a seven-year-old girl to death and in accordance with *People v. Gambao*, we exercise our judicial prerogative and increase the award of damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. No amount of remorse can change the fact that a seven-year-old girl is dead. There is no penalty commensurate with the indignity and the suffering that this child endured in the fading moments of her brief life. Nor is there any pecuniary equivalent to the loss of potential and the lifelong grief of her family.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**LEONEN, *J.*:**

The saddest thing about court decisions is that they cannot prevent moral depravity when it has already happened. We can only do justice by imposing the proper penalty upon the finding of guilt beyond reasonable doubt.

We affirm with modification the conviction of accused-appellant Ruben Baron for the crime of rape with homicide. Due to the sheer depravity of the offense, in that accused-appellant Ruben Baron raped a seven-year-old child and drowned

her to death, we increase the award of damages to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In an Information, accused-appellant Ruben Baron (Baron) was charged with the rape and killing of a seven-year-old girl identified as AAA:

> That on the 4th day of May, 1999 in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, through force, threat and intimidation did then and there wilfully, unlawfully and criminally have carnal knowledge with AAA against her will and having succeeded in raping the seven (7) years (sic) old girl kill the latter by drowning her at the river.
>
> CONTRARY TO LAW.[1]

Eight (8) witnesses testified for the prosecution: AAA's mother, Alcid Flores, Arsenio Valguna, Barangay Captain Segundina Morales, Ma. Concepcion Tacorda,[2] Gennivive Belarma, Dr. Tito D. Doromal, and rebuttal witness Romeo Inocencio.[3]

AAA's mother testified that at about 12:30 p.m. on May 4, 1999, AAA sought her permission to play at the day care center, which was a short distance from their house. At about 1:30 p.m., Baron arrived with AAA, both of them wet from head to toe. They informed her that they bathed at the seawall. They then asked her permission to go for a "joy-ride"[4] in Baron's *trisikad*. They returned at about 4:00 p.m. At about 5:30 p.m., she noticed that her daughter was missing. She then went to the Molo Supermarket to look for her common-law partner so that he may assist her. After a certain Perla Tacorda informed them that AAA might have returned to the seawall, AAA's mother sought Baron's assistance in searching for AAA. Baron initially

---

[1] *Rollo*, p. 5.

[2] Referred to as Ma. Concepcion Taborda in the Court of Appeals' Decision, but referred to as Ma. Concepcion Tacorda in the Regional Trial Court's records.

[3] *Rollo*, p. 6.

[4] *Id*.

refused, but with her prodding, reluctantly relented. With the permission of the landowner Felix Gascon and Barangay Captain Segundina Morales, they entered the seawall, where they found the lifeless body of AAA.[5]

Alcid Flores testified that at about 4:15 p.m. on May 4, 1999, he saw Baron in a white sleeveless shirt and short pants driving his *trisikad* with AAA in the passenger seat. They had passed by the seawall. Later in the day, he joined the search for AAA.[6]

Arsenio Valguna testified that at about 4:30 p.m. on May 4, 1999, he was outside the gate of the house of his employer Felix Gascon (Gascon), where they were having a conversation. He saw a *trisikad* parked some three (3) arms' length away with no one in it. About 15 minutes later, he saw a person clad in a white sleeveless shirt and short pants (whom he later identified in open court as Baron) coming from the river. He appeared nervous and hurried away, driving the same *trisikad* that was earlier parked. At about 8:00 p.m., he heard persons crying near the river. The following day, he revealed to Gascon what he saw the previous day. Upon Gascon's prodding, he reported the matter to the police. Subsequently, he identified Baron in a police line-up as the person he saw on May 4, 1999.[7]

Barangay Captain Segundina Morales testified that sometime between 7:00 and 7:30 p.m. of May 4, 1999, Romeo Inocencio and Baron sought her permission to enter the seawall as AAA, who earlier went there, was missing. There, Inocencio and Baron pointed to AAA's lifeless body. Alcid Flores, who was also present, told him that Baron ought to be imprisoned as it was he whom he saw accompanying AAA earlier in the day.[8]

Ma. Concepcion Tacorda, a 12-year-old acquaintance of AAA, testified that at about 4:30 p.m. on May 4, 1999, AAA invited her to play at the seawall. She refused, and AAA proceeded to

---

[5] *Id*. at 6-7.

[6] *Id*. at 7.

[7] *Id*. at 7-8.

[8] *Id*. at 8.

the seawall herself. She saw a medium-built man, clad in a white sleeveless shirt and short pants, following AAA.[9]

Gennivive Belarma, AAA's seven-year-old cousin, narrated that on May 4, 1999, she and AAA were playing with another girl, Candy, when AAA was picked up by Baron. She knew Baron as he was the husband of her mother's younger sister. AAA never returned to play with them. That evening, her mother told her that AAA had died.[10]

Dr. Tito Doromal, Medico-Legal Officer of the Philippine National Police, Iloilo City Police Office, prepared AAA's autopsy report and death certificate. He testified on his medico-legal findings. On AAA's drowning, he noted that the presence of water in her lungs showed that she was still alive when she was submerged.[11]

Romeo Inocencio, the common-law partner of AAA's mother, was presented as a rebuttal witness after Baron pointed to him as the culprit. He testified that at about 2:00 p.m. on May 4, 1999, he was playing *tong-its* at the day care center near their house when Baron and AAA arrived, all wet. Baron then asked AAA's mother if he could bring AAA along for a joy ride, to which she acceded. He added that from 3:00 to 5:30 p.m., he was at the parking area beside the Molo Supermarket.[12]

Three (3) witnesses testified for the defense: Baron, Trinidad Palacios, and Flordeliza Baron, Baron's wife.

Baron resorted to a denial. He testified that at about 2:00 p.m. on May 4, 1999, AAA joined him for a joy ride aboard his *trisikad*. At about 2:30 p.m., he turned over AAA to her mother in the presence of Gingging Tacorda, Langging Tacorda, Soledad Palacios, and Romeo Inocencio. At about 6:30 p.m., AAA's mother approached him in the vicinity of Molo

---

[9] *Id*.

[10] *Id*. at 9.

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

[12] *Id*. at 10-11.

Supermarket, asking about AAA's whereabouts. He reminded her that he had returned AAA to her. Romeo Inocencio asked him to go to the seawall, where they found AAA's lifeless body. He claimed to have learned of being implicated in AAA's rape and killing only after he was apprehended.[13]

Trinidad Palacios testified that at about 4:30 p.m. on May 4, 1999, she rode the *trisikad* driven by Baron from the Molo Supermarket to their house. She added that Baron stayed at the day care center for about 45 minutes, eating arroz caldo. At about 6:00 p.m., she returned to the Molo Supermarket and she saw Baron's *trisikad* parked across the road. Baron then met AAA's mother, who asked about AAA's whereabouts. He reminded her that he had turned over AAA to her. He then joined in the search for AAA.[14]

Flordeliza Baron testified on the same circumstances of Baron's having sought permission from AAA's mother for AAA to go to the seawall, and, much later, to join him on a joy ride, as well as of the search for AAA. On cross-examination, she said that between 5:00 and 6:00 p.m., she never saw Baron.[15]

In its Decision[16] dated May 10, 2004, the Regional Trial Court, Branch 23, Iloilo City found Baron guilty beyond reasonable doubt of rape with homicide and sentenced him to death. The dispositive portion of this Decision reads:

> WHEREFORE, in light of the facts obtaining and the jurisprudence aforecited, judgment is hereby rendered finding the accused Ruben Baron GUILTY beyond reasonable doubt of the crime of RAPE WITH HOMICIDE hereby sentencing the said accused to the supreme penalty of DEATH via lethal injection, further condemning the said accused to indemnify the heirs of the victim civil indemnity of ₱100,000.00, moral damages in the amount of ₱50,000.00, temperate

---

[13] *Id*. at 11.

[14] *Id*. at 12.

[15] *Id*.

[16] CA Records, pp. 29-45. The Decision was penned by Judge Tito G. Gustilo.

damages in the amount of ₱25,000.00 and the actual damages of ₱8,000.00.[17]

Let the entire records of this case be elevated to the Honorable Supreme Court, Manila for automatic review.

SO ORDERED.[18]

Pursuant to this court's Decision in *People v. Mateo*,[19] which settled on the Court of Appeals as an intermediate level of appeal in criminal cases imposing the penalty of *reclusion perpetua* or higher, the case was referred for review to the Court of Appeals.

In its Decision[20] dated April 23, 2014, the Court of Appeals affirmed with modification the Decision of the Regional Trial Court. The dispositive portion of this Decision reads:

WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 23, Cebu City in Criminal Case No. 00-51525 dated May 10, 2004 is hereby AFFIRMED WITH MODIFICATION. Accused-appellant Ruben Baron is found GUILTY beyond reasonable doubt of the special complex crime of rape with homicide and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused-appellant is ordered to pay the heirs of AAA the amounts of ₱100,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱25,000.00 as temperate damages and ₱8,000.00 as actual damages.

SO ORDERED.[21]

---

[17] *N.B.*, actual expenses relating to AAA's death in the amount of ₱8,000.00 were substantiated by receipts.

[18] *Rollo*, p. 13.

[19] 477 Phil. 752 (2004) [Per *J.* Vitug, *En Banc*].

[20] *Rollo*, pp. 4-25. The case was docketed as CA-G.R. CR-HC No. 00186. The Decision was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Marie Christine Azcarraga-Jacob of the Twentieth Division, Court of Appeals Cebu.

[21] *Id*. at 24.

On May 5, 2014, Baron filed before the Court of Appeals his Notice of Appeal.[22] The Court of Appeals then forwarded its records to this court.

In the Resolution[23] dated September 8, 2014, this court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

On January 22, 2015, the Office of the Solicitor General filed a Manifestation[24] on behalf of the People of the Philippines informing the court that it will no longer file a supplemental brief.

On February 20, 2015, Baron filed a Manifestation[25] noting that he will no longer file a supplemental brief and that he is, instead, adopting the Appellant's Brief he filed before the Court of Appeals.

For resolution is the sole issue of whether accused-appellant Ruben Baron's guilt has been established beyond reasonable doubt.

Accused-appellant is of the position that the prosecution has not established his involvement with certainty. He bewails the prosecution's reliance on supposedly tenuous circumstantial evidence.

The requirements for circumstantial evidence to sustain a conviction are settled. Rule 133, Section 4 of the Revised Rules on Evidence provides:

Section 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

---

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

[23] *Id*. at 32.

[24] *Id*. at 34-36.

[25] *Id*. at 35.

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

Moreover, "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[27]

A careful examination of the records shows that there is nothing that warrants a reversal of the Decisions of the Regional Trial Court and of the Court of Appeals.

As pointed out by the Court of Appeals, a multiplicity of circumstances, which were attested to by credible witnesses and duly established from the evidence, points to no other conclusion than that accused-appellant was responsible for the rape and killing of the seven-year-old child, AAA:

(1) Seven-year-old Gennivive Belarma was playing with AAA when Baron picked up AAA and brought her to the river/seawall.

(2) Alcid Flores saw accused-appellant clad in a white sleeveless shirt and short pants with AAA walking towards the seawall at about 4:15 p.m. on May 4, 1999.

(3) Twelve-year-old Ma. Concepcion Tacorda saw a man clad in a white sleeveless shirt and short pants right behind AAA as she was going towards the seawall. Her description of what the man was wearing matched Flores' and Valguna's description of what Baron was wearing.

---

[26] *See also People v. Bayon*, 636 Phil. 713, 722 (2010) [Per *J*. Peralta, Second Division].

[27] *People v. De Jesus*, G.R. No. 191753, September 17, 2012, 680 SCRA 680, 687 [Per *J*. Brion, Second Division], *citing People v. Jubail,* G.R. No. 143718, May 19, 2004, 428 SCRA 478, 495 [Per *J*. Carpio, First Division].

(4) Arsenio Valguna saw accused-appellant, clad in a white sleeveless shirt and short pants, nervously and hurriedly leaving the seawall and, thereafter, boarding his *trisikad*.

(5) Accused-appellant's conduct when he was asked by AAA's mother to join the search, in which he expressed much reluctance despite his having been the last known companion of AAA.

(6) AAA's body, which bore injuries at the vaginal area, was discovered at the seawall. The seawall is the same place several witnesses identified as where AAA and accused-appellant went in the afternoon of May 4, 1999. This is also the same from where accused-appellant nervously and hurriedly left in the same afternoon.

(7) The lacerations sustained by AAA on her vagina, which, per Dr. Doromal, could very well have been caused by the insertion of an erect penis.

(8) The medico-legal findings pointing to asphyxiation by drowning as the cause of AAA's death, along with other injuries on her thorax, abdomen, and extremities.

Testimonies regarding these details were given by disinterested witnesses whom Baron himself had not managed to discredit for having any ill-motive against him. Two (2) of the prosecution witnesses are even children of tender age.

As against these details and testimonies, all that accused-appellant had offered in defense were denial and alibi—defenses that jurisprudence has long considered weak and unreliable. It is hardly a relief to accused-appellant that two (2) witnesses have testified in his defense. Even their testimonies failed to definitively establish that accused-appellant neither raped nor killed AAA. Defense witness Flordeliza Baron even admitted that during the critical time between 5:00 and 6:00 p.m. of May 4, 1999, when the rape and killing most likely took place, she was never really aware of accused-appellant's whereabouts.[28]

---

[28] *Rollo*, p. 12.

There is, thus, no error in the Regional Trial Court's and the Court of Appeals' conclusion that accused-appellant Ruben Baron is guilty beyond reasonable doubt of the crime of rape with homicide of the seven-year-old child, AAA. His conviction must be affirmed.

However, we do not merely affirm his conviction as it stands.

It was error for the Regional Trial Court to award temperate damages alongside actual damages. Thus, we delete the award of temperate damages.

In *People v. Gambao*,[29] we took occasion to require an increase in the minimum award of damages where the death penalty would have been imposed, were it not for a law[30] preventing it:

> We take this opportunity to increase the amounts of indemnity and damages, where, as in this case, the penalty for the crime committed is death which, however, cannot be imposed because of the provisions of R.A. No. 9346:
>
> 1. ₱100,000.00 as civil indemnity;
> 2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
> 3. ₱100,000.00 as exemplary damages to set an example for the public good.
>
> *These amounts* ***shall be the minimum*** *indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law*.[31] (Emphasis supplied)

Thus, for the sheer heinousness and depravity of accused-appellant's acts of raping and drowning a seven-year-old girl to death and in accordance with *People v. Gambao*, we exercise our judicial prerogative and increase the award of damages to

---

[29] G.R. No. 172707, October 1, 2013, 706 SCRA 508 [Per *J.* Perez, *En Banc*].

[30] Rep. Act No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

[31] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533 [Per *J.* Perez, *En Banc*].

₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

No amount of remorse can change the fact that a seven-year-old girl is dead. There is no penalty commensurate with the indignity and the suffering that this child endured in the fading moments of her brief life. Nor is there any pecuniary equivalent to the loss of potential and the lifelong grief of her family.

**WHEREFORE**, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00186 is hereby **AFFIRMED with MODIFICATION**. Accused-appellant Ruben Baron is found **GUILTY** beyond reasonable doubt of the special complex crime of rape with homicide and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused-appellant is ordered to pay the heirs of AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱8,000.00 as actual damages.

Furthermore, all monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of the finality of this judgment until fully paid.

**SO ORDERED.**

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

---

**THIRD DIVISION**

[G.R. No. 214092. January 11, 2016]

**ECHO 2000 COMMERCIAL CORPORATION, EDWARD N. ENRIQUEZ, LEONORA K. BENEDICTO and ATTY. GINA WENCESLAO,** *petitioners, vs.* **OBRERO FILIPINO-ECHO 2000 CHAPTER-CLO, ARLO C. CORTES and DAVE SOMIDO,** *respondents.*

## SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; AN EMPLOYEE IS NOT BOUND TO ACCEPT A PROMOTION, WHICH IS IN THE NATURE OF A GIFT OR REWARD; THE REFUSAL TO ACCEPT PROMOTION CANNOT BE CONSIDERED IN LAW AS INSUBORDINATION, OR WILLFUL DISOBEDIENCE OF A LAWFUL ORDER OF THE EMPLOYER AND CANNOT BE THE BASIS OF AN EMPLOYEE'S DISMISSAL.—** For promotion to occur, there must be an advancement from one position to another or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee. An employee is not bound to accept a promotion, which is in the nature of a gift or reward. Refusal to be promoted is a valid exercise of a right. Such exercise cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer, hence, it cannot be the basis of an employee's dismissal from service.

2. **ID.; ID.; ID.; RESPONDENTS' REFUSAL TO ACCEPT THE PROMOTION IS VALID.—** In the case at bench, a Warehouse Checker and a Forklift Operator are rank-and-file employees. On the other hand, the job of a Delivery Supervisor/Coordinator requires the exercise of discretion and judgment from time to time. Specifically, a Delivery Supervisor/Coordinator assigns teams to man the trucks, oversees the loading of goods, checks the conditions of the trucks, coordinates with account specialists in the outlets regarding their delivery concerns, and supervises other personnel about their performance in the warehouse. A Delivery Supervisor/Coordinator's duties and responsibilities are apparently not of the same weight as those of a Warehouse Checker or Forklift Operator. Hence, despite the fact that no salary increases were effected, the assumption of the post of a Delivery Supervisor/Coordinator should be considered a promotion. The respondents' refusal to accept the same was therefore valid.

3. **ID.; ID.; ID.; NO SUFFICIENT BASIS FOR AWARD OF MORAL AND EXEMPLARY DAMAGES; BAD FAITH CANNOT BE INFERRED SOLELY FROM THE**

**IMPOSITION OF DISCIPLINARY PENALTIES UPON THE RESPONDENTS FOR THE LATTER'S INTRANSIGENCE.—** Notwithstanding the illegality of the respondents' dismissal, the Court finds no sufficient basis to award moral and exemplary damages. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just or authorized cause. In the instant case, the right not to accept an offered promotion pertained to each of the respondents. However, they exhibited disrespectful behavior by their repeated refusal to receive the memoranda issued by Echo and by their continued presence in their respective areas without any work output. The Court thus finds that although the respondents' dismissal from service for just cause was unwarranted, there is likewise no basis for the award of moral and exemplary damages in their favor. Echo expectedly imposed disciplinary penalties upon the respondents for the latter's intransigence. Albeit the Court is not convinced of the character and extent of the measures taken by Echo, bad faith cannot be inferred solely from the said impositions.

4. **ID.; ID.; ID.; UNFAIR LABOR PRACTICE; IT MUST BE SHOWN THAT THE EMPLOYER CONCLUSIVELY INTERFERED WITH, RESTRAINED, OR COERCED EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF-ORGANIZATION.—** Anent the NLRC and CA's conclusion that Echo committed unfair labor practice, the Court disagrees. Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. The respondents allege that their transfer/promotion was intended to deprive the Union of leadership and membership. They claim that other officers were already dismissed. The foregoing, however, lacks substantiation. Unfair labor practice is a serious charge, and the respondents failed to show that the petitioners conclusively interfered with, restrained, or coerced employees in the exercise of their right to self-organization.

**5. ID.; ID.; ID.; THE CORPORATE OFFICERS CANNOT BE HELD PERSONALLY LIABLE FOR RESPONDENTS' MONEY CLAIMS ABSENT SHOWING OF MALICE OR BAD FAITH ON THEIR PART.—** *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira* expounds on the liabilities of corporate officers to illegally dismissed employees. The Court declared: As a general rule, only the employer-corporation, partnership or association or any other entity, and not its officers, which may be held liable for illegal dismissal of employees or for other wrongful acts. This is as it should be because a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. It is settled that in the absence of malice and bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. They are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In *Philippine American Life and General Insurance v. Gramaje*, bad faith is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. In the instant petition, the respondents failed to specify and sufficiently prove the alleged acts of Enriquez, Benedicto and Atty. Wenceslao from which malice or bad faith can be concluded. Hence, there is no reason to invoke the exception to the general rule on non-liability of corporate officers.

**6. ID.; ID.; ID.; IN LIEU OF ACTUAL REINSTATEMENT, RESPONDENTS ARE ENTITLED TO SEPARATION PAY; ANNUAL INTEREST OF SIX PERCENT (6%) IMPOSED ON THE MONETARY AWARD.—** "In cases of illegal dismissal, the accepted doctrine is that separation pay is available in *lieu* of reinstatement when the latter recourse is no longer practical or in the best interest of the parties." The Court notes that the respondents were terminated from service on August 15, 2009, or more than six years ago. Their reinstatement will not be practical and to the best interest of the parties. The Court

thus finds more prudence in awarding separation pay to the respondents equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this Decision. In accordance with *Nacar v. Gallery Frames*, the Court now imposes an interest on the monetary awards at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

**APPEARANCES OF COUNSEL**

*Eric C. Opriasa* for petitioners.
*Rodolfo M. Capoquian Law Offices* for respondents.

**D E C I S I O N**

**REYES, *J.*:**

Before the Court is the petition for review on *certiorari*[1] filed by Echo 2000 Commercial Corporation (Echo) to assail the Decision[2] rendered on September 24, 2013 and Resolution[3] issued on March 28, 2014 by the Court of Appeals (CA) in CA-G.R. SP No. 121393. The CA affirmed the Decision[4] dated April 15, 2011 of the National Labor Relations Commission's (NLRC) Fifth Division, which declared that Arlo C. Cortes (Cortes) and Dave Somido (Somido) (respondents) were illegally dismissed from employment by Echo. Edward N. Enriquez (Enriquez), Leonora K. Benedicto (Benedicto) and Atty. Gina Wenceslao (Atty. Wenceslao) used to be Echo's General Manager, Operations and Human Resources Officer, and External

---

[1] *Rollo*, pp. 8-41.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. concurring; *id*. at 42-51.

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

[4] Penned by Presiding Commissioner Leonardo L. Leonida, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring, *id*. at 149-159.

Counsel, respectively (Echo and the three officers are to be referred collectively as the petitioners). The CA and NLRC's rulings reversed the Decision[5] of Labor Arbiter (LA) Renaldo O. Hernandez (Hernandez), who found the respondents' termination from service as valid.

**Antecedents**

Echo is a provider of warehousing management and delivery services.

King 8 Commercial Corporation (King 8), Echo's predecessor, initially employed Cortes on September 17, 2002, and Somido, on October 12, 2004. Echo thereafter absorbed the respondents as employees on April 1, 2005. In 2008, Somido was made a Warehouse Checker, while Cortes, a Forklift Operator.[6]

In January of 2009, the respondents and their co-workers formed Obrero Pilipino-Echo 2000 Commercial Chapter (Union). Cortes was elected as Vice-President while Somido became an active member. The respondents claimed that the Union's President, Secretary and one of the board members were subsequently harassed, discriminated and eventually terminated from employment by Echo.[7]

In May of 2009, Echo received information about shortages in peso value arising from the movement of products to and from its warehouse. After an immediate audit, Echo suspected that there was a conspiracy among the employees in the warehouse. Since an uninterrupted investigation was necessary, Echo, in the exercise of its management prerogative, decided to re-assign the staff. The respondents were among those affected.[8]

---

[5] *Id*. at 120-148.

[6] *Id*. at 150.

[7] *Id*.

[8] *Id*. at 152-153.

On July 7, 2009, Enriquez issued a memorandum informing the respondents of their transfer to the Delivery Section, which was within the premises of Echo's warehouse. The transfer would entail no change in ranks, status and salaries.[9]

On July 14, 2009, Somido wrote Echo a letter[10] indicating his refusal to be promoted as a "Delivery Supervisor." He explained that he was already happy as a Warehouse Checker. Further, he was not ready to be a Delivery Supervisor since the position was sensitive and required more expertise and training, which he did not have.

Cortes similarly declined Echo's offer of promotion claiming that he was contented in his post then as a Forklift Operator. He also alleged that he would be more productive as an employee if he remained in his post. He also lacked prior supervisory experience.[11]

On July 16, 2009, Enriquez, *sans* consent of the respondents, informed the latter of their assignments/designations, effective July 17, 2009, as Delivery Supervisors with the following duties: (a) act as delivery dispatchers of booked and planned deliveries for the day; (b) ensure the early loading of goods to the delivery trucks to avoid late take-offs; (c) man delivery teams for the trucks; (d) check the operational and cleanliness conditions of the trucks; (e) attend to delivery concerns of account specialists of their outlets; and (f) call the attention of other warehouse personnel and report the same to the Human Resources Department regarding absences/tardiness, incomplete uniforms, appearances, refusal to accept delivery trips and other matters affecting warehouse productivity.[12]

Echo alleged that the respondents did not perform the new duties assigned to them. Hence, they were each issued a

---

[9] *Id*. at 153.

[10] *Id*. at 274.

[11] *Id*. at 264.

[12] *Id*. at 207-208, 263.

memorandum, dated July 16, 2009, requiring them to explain in writing their failure to abide with the new assignments.[13]

On July 18, 2009, Echo clarified through a memo that the respondents were designated as "Delivery Coordinators" and not "Supervisors."[14]

Thereafter, successive memoranda were issued by Echo to the respondents, who refused to acknowledge receipt and comply with the directives therein. The Memoranda[15] dated July 20, 2009 suspended them without pay for five days for their alleged insubordination. The Memoranda[16] dated August 8, 2009 informed them of their termination from employment, effective August 15, 2009, by reason of their repeated refusal to acknowledge receipt of Echo's memoranda and flagrant defiance to assume the duties of Delivery Coordinators.

**The Proceedings Before the LA**

On August 17, 2009, the respondents filed before the NLRC a complaint against Echo for unfair labor practice, illegal dismissal, illegal suspension, illegal deductions and payment of money claims, damages and attorney's fees.[17] The respondents claimed that they were offered promotions, which were mere ploys to remove them as rank-and-file employees, and oust them as Union members.[18]

The petitioners, on the other hand, insisted that the respondents were merely transferred, and not promoted. Further, the respondents arrogantly refused to comply with Enriquez's directives. Their insubordination constituted just cause to terminate them from employment.[19]

---

[13] *Id*. at 204-205.

[14] *Id*. at 210-211.

[15] *Id*. at 216-217.

[16] *Id*. at 237-240.

[17] *Id*. at 44.

[18] *Id*. at 45.

[19] *Id*.

On April 20, 2010, LA Hernandez dismissed the respondents' complaint for reasons stated below: (a) the claims of union-busting, harassment and discrimination were not supported by evidence;[20] (b) no promotions occurred as the duties of the Delivery Supervisors/Coordinators were merely reportorial in nature and not indicative of any authority to hire, fire or change the status of other employees;[21] and (c) Echo properly exercised its management prerogative to order the transfer, and this was done without intended changes in the ranks, salaries, status or places of assignment of the respondents.[22]

**The Proceedings Before the NLRC**

The respondents filed an appeal assailing LA Hernandez's ruling. The dispositive portion of the NLRC's Decision dated April 15, 2011 is quoted below:

> WHEREFORE, premises considered, the appeal is **GRANTED**. The appealed decision of the [LA] dated April 20, 2010 is **REVERSED and SET ASIDE** and a new one is entered declaring [the petitioners] guilty of unfair labor practice and illegal dismissal of the [respondents]. [The petitioners] are ordered to immediately reinstate [the respondents] to their previous positions without loss of seniority rights and other privileges/benefits and to pay [the respondents] the following:
>
> 1. full backwages from the time of their dismissal up to their actual reinstatement;
> 2. the sum of ₱20,000.00 as moral damages[;]
> 3. the sum of ₱20,000.00 as exemplary damages; and ten [percent (10%)] of the monetary award as attorney's fees.
>
> All other monetary claims are dismissed for lack of substantiation.
>
> SO ORDERED.[23]

---

[20] *Id*. at 139.

[21] *Id*. at 140.

[22] *Id*. at 142.

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

In sustaining the respondents' arguments, the NLRC explained that at the time of the former's dismissal, they had been employed by Echo for several years since 2002 and 2004, respectively. There were no prior untoward incidents. However, things changed when the Union was formed. When the two did not agree to be transferred, they were terminated for insubordination, a mere ploy to lend a semblance of legality to a pre-conceived management strategy.[24]

The NLRC denied the petitioners' motion for reconsideration.[25]

**The Proceedings Before the CA**

The petitioners thereafter filed a Petition for *Certiorari*.[26] In the herein assailed Decision dated September 24, 2013, the CA affirmed *in toto* the NLRC's ruling citing the following as grounds:

> A transfer is a movement from one position to another which is of equivalent rank, level or salary, without break in service. Promotion, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.
>
> x x x There is no doubt that said position of Delivery Supervisor/ Coordinator entails great duties and responsibilities of overseeing ECHO's business and involves discretionary powers. x x x What is important is the change in the nature of work which resulted in an upgrade of their work condition and increase of duties and responsibilities which constitute promotion and not a mere transfer.
>
> A transfer that results in promotion cannot be done without the employee's consent since there is no law that compels an employee to accept a promotion for the reason that a promotion is in the nature of a gift or reward, which a person has a right to refuse. When [the respondents] refused to accept their promotion as Delivery Supervisors/ Coordinators, they were exercising a right and they cannot be punished for it. He who uses his own legal right injures no one. Thus, [the

---

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

[25] *Id*. at 161-163.

[26] *Id*. at 54-118.

respondents'] refusal to be promoted was not a valid cause for their dismissal.

Anent the award of moral damages, exemplary damages and attorney's fees, We agree with the NLRC that [the respondents] are entitled to the same.

x x x x x x x x x

x x x We agree with the NLRC that the dismissal of [the respondents] was tainted with bad faith as they were dismissed by ECHO for refusing to accept their promotion as Delivery Supervisor[s]/Coordinator[s]. x x x The NLRC also found that ECHO's act of transferring [the respondents] from Forklift Operator and Warehouse Checker x x x to Delivery Supervisors/Coordinators was aimed to remove them among the rank-and-file employees which amounts to union interference. Without the leadership of Cortes, as Vice-President, and Somido, as an active member, the union would be severely weakened, especially since most of its officers were already terminated by ECHO. x x x.[27] (Citations omitted)

The petitioners filed a motion for reconsideration, which the CA denied through the Resolution[28] dated March 28, 2014.

## Issues

Unperturbed, the petitioners are now before the Court raising the issues of whether or not:

(1) the respondents were illegally suspended and terminated, hence, entitled to payment of their money claims, damages and attorney's fees;

(2) Echo and its officers are guilty of unfair labor practice; and

(3) Echo's officers, who are sued as nominal parties, should be held liable to pay the respondents their money claims.[29]

In support thereof, the petitioners claim that the respondents' refusal to comply with the management's transfer order

---

[27] *Id*. at 48-50.

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

[29] *Id*. at 22-23.

constitutes just cause to terminate the latter from employment. Echo also points out that before it closed shop on July 6, 2011, the Union continued existing despite the respondents' dismissal from service. Hence, there is no factual basis in the NLRC and CA's ruling that the respondents' termination is intertwined with union-busting.[30]

The petitioners further argue that the respondents failed to establish by substantial evidence that Echo's officers, namely, Enriquez, Benedicto and Atty. Wenceslao, acted with malice. Thus, they cannot be held liable as well.[31]

Corollarily, the dismissal being valid, there is no ground to grant the respondents' prayer for reinstatement and payment of money claims and damages.[32]

In their Comment,[33] the respondents reiterate that their transfer/promotion was conceived to pave the way for their eventual termination from employment. Moreover, even before the respondents could convey their acceptance or refusal to the transfer/promotion, they were promptly replaced by newly-hired contractual employees.

**Ruling of the Court**

*The Court partially grants the instant petition.*

The first two issues, being interrelated, shall be discussed jointly.

**The offer of transfer is, in legal contemplation, a promotion, which the respondents validly refused. Such refusal cannot be the basis for the respondents' dismissal from service. The finding of unfair labor practice and**

---

[30] *Id*. at 24-25.

[31] *Id*. at 36.

[32] *Id*. at 31-34.

[33] *Id*. at 299-311.

**the award of moral and exemplary damages do not however follow solely by reason of the dismissal.**

Article 212(13) of the Labor Code distinguishes from each other as follows the concepts of managerial, supervisory and rank-and-file employees:

"*Managerial employee*" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. *Supervisory employees* are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered *rank-and-file employees* for purposes of this Book. (Italics ours)

As to the extent of management prerogative to transfer/promote employees, and the differences between transfer on one hand, and promotion, on the other, *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*[34] is instructive, *viz*:

[L]abor laws discourage interference in employers' judgment concerning the conduct of their business.

In the pursuit of its legitimate business interest, management has the prerogative to transfer or assign employees from one office or area of operation to another – provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. x x x.

x x x In the case of *Blue Dairy Corporation v. National Labor Relations Commission*, we described in more detail the limitations on the right of management to transfer employees:

> x x x [I]t cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve

[34] 646 Phil. 587 (2010).

> a demotion in rank or a diminution of his salaries, privileges and other benefits. x x x.
>
> x x x x
>
> A *transfer* is a movement from one position to another which is of equivalent rank, level or salary, without break in service. *Promotion*, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and **usually accompanied by an increase in salary.** Conversely, *demotion* involves a situation where an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.[35] (Citations omitted and emphasis and underscoring ours)

For promotion to occur, there must be an advancement from one position to another or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee.[36]

An employee is not bound to accept a promotion, which is in the nature of a gift or reward. Refusal to be promoted is a valid exercise of a right.[37] Such exercise cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer, hence, it cannot be the basis of an employee's dismissal from service.[38]

In the case at bench, a Warehouse Checker and a Forklift Operator are rank-and-file employees. On the other hand, the job of a Delivery Supervisor/Coordinator requires the exercise of discretion and judgment from time to time. Specifically, a

---

[35] *Id*. at 607-611.

[36] *Phil. Telegraph & Telephone Corporation v. CA,* 458 Phil. 905, 919 (2003), citing *Homeowners Savings and Loan Association v. NLRC*, 330 Phil. 979, 994 (1996).

[37] Please *see Erasmo v. Home Insurance & Guaranty Corporation*, 436 Phil. 689, 697 (2002).

[38] *Supra* note 36.

Delivery Supervisor/Coordinator assigns teams to man the trucks, oversees the loading of goods, checks the conditions of the trucks, coordinates with account specialists in the outlets regarding their delivery concerns, and supervises other personnel about their performance in the warehouse. A Delivery Supervisor/Coordinator's duties and responsibilities are apparently not of the same weight as those of a Warehouse Checker or Forklift Operator. Hence, despite the fact that no salary increases were effected, the assumption of the post of a Delivery Supervisor/Coordinator should be considered a promotion. The respondents' refusal to accept the same was therefore valid.

Notwithstanding the illegality of the respondents' dismissal, the Court finds no sufficient basis to award moral and exemplary damages.

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just or authorized cause.[39]

In the instant case, the right not to accept an offered promotion pertained to each of the respondents. However, they exhibited disrespectful behavior by their repeated refusal to receive the memoranda issued by Echo and by their continued presence in their respective areas without any work output.[40] The Court thus finds that although the respondents' dismissal from service for just cause was unwarranted, there is likewise no basis for the award of moral and exemplary damages in their favor. Echo expectedly imposed disciplinary penalties upon the respondents for the latter's intransigence. Albeit the Court is not convinced of the character and extent of the measures taken by Echo, bad faith cannot be inferred solely from the said impositions.

---

[39] *Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira,* 639 Phil. 1, 15-16 (2010).

[40] Please *see* Memoranda dated July 20, 2009, *rollo*, pp. 216-217; Information Reports dated July 27, and 28, 2009, *id*. at 218-219.

Anent the NLRC and CA's conclusion that Echo committed unfair labor practice, the Court disagrees.

Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.[41]

The respondents allege that their transfer/promotion was intended to deprive the Union of leadership and membership. They claim that other officers were already dismissed. The foregoing, however, lacks substantiation. Unfair labor practice is a serious charge, and the respondents failed to show that the petitioners conclusively interfered with, restrained, or coerced employees in the exercise of their right to self-organization.

**Enriquez, Benedicto and Atty. Wenceslao cannot be held personally liable for the respondents' money claims.**

*Lambert Pawnbrokers and Jewelry Corporation, et al. v. Binamira*[42] expounds on the liabilities of corporate officers to illegally dismissed employees. The Court declared:

> As a general rule, only the employer-corporation, partnership or association or any other entity, and not its officers, which may be held liable for illegal dismissal of employees or for other wrongful acts. This is as it should be because a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. It is

---

[41] LABOR CODE OF THE PHILIPPINES, Article 247.

[42] 639 Phil. 1 (2010).

settled that in the absence of malice and bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. They are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In *Philippine American Life and General Insurance v. Gramaje*, bad faith is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[43] (Citations omitted and underlining ours)

In the instant petition, the respondents failed to specify and sufficiently prove the alleged acts of Enriquez, Benedicto and Atty. Wenceslao from which malice or bad faith can be concluded. Hence, there is no reason to invoke the exception to the general rule on non-liability of corporate officers.

**In *lieu* of actual reinstatement, the respondents are entitled to separation pay.**

"In cases of illegal dismissal, the accepted doctrine is that separation pay is available in *lieu* of reinstatement when the latter recourse is no longer practical or in the best interest of the parties."[44]

The Court notes that the respondents were terminated from service on August 15, 2009, or more than six years ago. Their reinstatement will not be practical and to the best interest of the parties. The Court thus finds more prudence in awarding separation pay to the respondents equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this Decision.

**An annual interest of six percent (6%) is imposed on the monetary award.**

---

[43] *Id*. at 14.

[44] *Cheryll Santos Leus v. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.

In accordance with *Nacar v. Gallery Frames*,[45] the Court now imposes an interest on the monetary awards at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

**WHEREFORE**, the instant petition is **PARTIALLY GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 121393, dated September 24, 2013 and March 28, 2014, respectively, are **MODIFIED.**

The petitioner, Echo 2000 Commercial Corporation, is hereby declared guilty of illegal dismissal. In addition to the National Labor Relations Commission's award of attorney's fees, Echo 2000 Commercial Corporation is likewise **ORDERED to pay** the respondents, Arlo C. Cortes and Dave Somido, the following:

(a) separation pay in *lieu* of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the time of the dismissal up to the finality of this Decision;

(b) full backwages from the time of the illegal dismissal up to the finality of this Decision; and

(c) interest on all monetary awards at the rate of 6% *per annum* from the finality of this Decision until full payment.

The amounts awarded as moral and exemplary damages by the National Labor Relations Commission to Arlo C. Cortes and Dave Somido are however deleted for lack of basis.

The case is **REMANDED** to the Labor Arbiter, who is hereby **DIRECTED to COMPUTE** the monetary benefits awarded in accordance with this Decision.

**SO ORDERED**.

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

---

[45] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

# INDEX

# INDEX

**APPEALS**

# CITATION

Page

## I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page



## II. FOREIGN CASES



# REFERENCES

## I. LOCAL AUTHORITIES

### A. CONSTITUTION



### B. STATUTES

Page

Page

Page

Page

Page

Page

## C. OTHERS



## D. BOOKS

(Local)



## II. FOREIGN AUTHORITIES

### BOOKS